

**In The Matter Of:**  
*United States vs.*  
*PFC Bradley E. Manning*

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*Vol. 17*  
*July 10, 2013*  
*UNOFFICIAL DRAFT - 7/10/13 Morning Session*

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*Provided by Freedom of the Press Foundation*

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VOLUME XVII  
IN THE UNITED STATES ARMY  
  
UNITED STATES  
VS.  
MANNING, Bradley E., PFC COURT-MARTIAL  
U.S. Army, xxx-xx-9504  
Headquarters and Headquarters Company,  
U.S. Army Garrison,  
Joint Base Myer-Henderson Hall,  
Fort Myer, VA 22211  
\_\_\_\_\_ /

The Hearing in the above-entitled matter  
was held on Wednesday, July 10, 2013, at 9:40 a.m., at  
Fort Meade, Maryland, before the Honorable Colonel  
Denise Lind, Judge.

DISCLAIMER

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1    **APPEARANCES:**

2  
3                    **ON BEHALF OF GOVERNMENT:**

4                    **MAJOR ASHDEN FEIN**

5                    **CAPTAIN JOSEPH MORROW**

6                    **CAPTAIN ANGEL OVERGAARD**

7                    **CAPTAIN HUNTER WHYTE**

8                    **CAPTAIN ALEXANDER von ELTON**

9  
10                   **ON BEHALF OF ACCUSED:**

11                   **DAVID COOMBS**

12                   **CAPTAIN JOSHUA TOOMAN**

13                   **MAJOR THOMAS HURLEY**

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PROCEEDINGS

THE COURT: Court is called to order.  
Major Fein, please account for the parties.

MR. FEIN: Your Honor, all parties in the court last recessed are present. At 9:30 this morning 11 members of the media, one stenographer, 26 spectators in the courtroom and two spectators in the overflow trailer.

I'm sorry, ma'am, also Captain Morrow is present. He was not present yesterday.

THE COURT: Thank you.

Have there been any exhibits added since we recessed the session?

MR. FEIN: Ma'am, there have been no appellate exhibits. There have been prosecution exhibits that will be addressed with the witness later this morning.

THE COURT: What is the status of the closed sessions?

MR. FEIN: Yes, ma'am. The first closed session that occurred on 26 June 2013 with Special

1 Agent Shaver, that transcript is being completed and  
2 classification review being completed and unclassified  
3 redacted version is available for the members of the  
4 media in the operations center.

5 There are 10 copies that will be made  
6 available starting the next recess in the outer area  
7 inside the courtroom.

8 Additionally, as of 8:50 this morning a  
9 copy of the transcript has been posted to the Army's  
10 reading room for this court-martial.

11 Finally, Monday, the update I gave about  
12 the transcript of the second session is Mr. Lewis,  
13 although there were errors in the transcription and  
14 that was finished yesterday, both parties will receive  
15 printed copies of those transcripts or that transcript  
16 this afternoon when the session is over. And then  
17 we'll start reviewing that for the errata process.

18 THE COURT: Defense, any issues with any of  
19 that?

20 MR. COOMBS: No, Your Honor.

21 THE COURT: Anything else we need to

1 address before we proceed today?

2 MR. FEIN: No, ma'am.

3 MR. COOMBS: No, Your Honor.

4 THE COURT: I believe Mr. Ganiel was  
5 testifying yesterday.

6 Defense, you are finished with your direct;  
7 is that correct?

8 MR. COOMBS: Yes, Your Honor.

9 THE COURT: So he is coming back on  
10 cross-examination?

11 MS. OVERGAARD: Yes, ma'am.

12 THE COURT: Please bring in the witness.

13 CROSS-EXAMINATION BY MS. OVERGAARD:

14 Q Mr. Ganiel, I need to finish  
15 cross-examination and I'll remind you you're still  
16 under oath.

17 A Yes, ma'am.

18 Q Now, when we ended yesterday, we were  
19 talking about the Defense Exhibit Yankee and the  
20 Defense Exhibit Zulu?

21 A Right.



1           Q           And last night, instead of going through  
2           this on the witness stand, last night you and I met and  
3           we went through Defense Exhibit Yankee and Zulu; is  
4           that correct?

5           A           Yes.

6           Q           And compared what was in Defense Exhibit  
7           Yankee and Zulu to what was in Foxtrot?

8           A           Yes.

9           Q           All the open source information?

10          A           Yes.

11          Q           When we went through that, there were  
12          certain information that was highlighted as being an  
13          open source that wasn't actually in the open source; is  
14          that correct?

15          A           After looking through it again, I can see  
16          the government's point where it wasn't matching up so  
17          we agreed to pull that out.

18          Q           And there were actually a couple of things  
19          that we added as well that were in the open source?

20          A           Right.

21          Q           Retrieving prosecution Exhibit 184 for

1 identification. And 185 for identification.

2 Can you tell us what those are?

3 A Prosecution Exhibit 185 is one of the  
4 cables and prosecution Exhibit 184 is the second cable  
5 in question.

6 Q Are both the cables, were they both  
7 highlighted in yellow identically as Defense Exhibits  
8 Yankee and Zulu?

9 A Yes, ma'am.

10 Q And then the red boxes that are around some  
11 of the highlights, is that what you and I added  
12 yesterday evening and you noted on the side saying that  
13 I agree these are not an open source?

14 A Yes, ma'am.

15 Q So those are the things that we agreed that  
16 were highlighted that shouldn't be highlighted anymore?

17 A Right.

18 Q And then the highlight in the orange is  
19 what we agreed last night would actually be in the open  
20 source that wasn't previously highlighted?

21 A Yes, ma'am.

1           Q           So everything is consolidated on those two  
2 documents?

3           A           Yes, ma'am.

4                   MS. OVERGAARD: Ma'am, the government moves  
5 to admit what has been marked as prosecution  
6 Exhibit 184 and 185.

7                   MR. COOMBS: No objection.

8                   THE COURT: May I see it, please?

9                   Prosecution Exhibits 184 and 185 are  
10 admitted.

11 BY MS. OVERGAARD:

12           Q           Yesterday we established that part of your  
13 job is to protect classified information, correct?

14           A           Yes, ma'am.

15           Q           And by protecting classified government  
16 information, you mean keeping information in the  
17 government's possession and out of the hands of other  
18 individuals, correct?

19           A           Yes, ma'am.

20           Q           And you were protecting or protecting that  
21 information is protecting the U.S. Government's

1 ownership interest in that information?

2 A Yes, ma'am.

3 Q And is it important to protect the  
4 government's ownership interest in that information?

5 A Yes, it is, ma'am.

6 Q Why is that important?

7 A That information could hold the nation's  
8 secrets. It could be something detrimental to our  
9 country that we don't think other countries need to  
10 know about so we are under an obligation to protect it.

11 MS. OVERGAARD: Thank you. No further  
12 questions.

13 THE COURT: Redirect?

14 MR. COOMBS: Yes, Your Honor.

15 REDIRECT EXAMINATION BY MR. COOMBS:

16 Q When you went through the cables again last  
17 night with the government, the items that you read that  
18 perhaps maybe shouldn't have been highlighted, was that  
19 subject to interpretation?

20 A Probably a couple of the items but we  
21 agreed in the long run that it's not going to be for

1     what we found in open source. We agreed to that.

2             Q           Why wouldn't it be?

3             A           One of the open source information was  
4     written prior to the cable so, of course, it's not  
5     going to match.

6             Q           Am I understanding you corrected one of the  
7     open source comments that you considered was published  
8     before the cable was written?

9             A           Yes.

10            Q           And based upon your review of the open  
11   source document, did it appear to you that the cable  
12   was written based upon the open source document?

13            A           One could probably come to that conclusion.

14            Q           With regards to the items that you didn't  
15   box, that you agree were still in the open source, was  
16   that the vast majority of your highlights?

17            A           Can you repeat the question?

18            Q           Right. The items -- you went through  
19   everything, apparently you identified a view items that  
20   subject to interpretation shouldn't have perhaps been  
21   highlighted?

1           A           Right.

2           Q           Were the vast majority of your highlights  
3 still good in the documents?

4           A           I believe they were, yes.

5                       MR. COOMBS: Thank you.

6                       RE CROSS-EXAMINATION BY MS. OVERGAARD:

7           Q           Several items that we kept were also  
8 subject to interpretation?

9           A           Right.

10          Q           We just agreed on what was an obvious  
11 interpretation, what could be interpreted and what  
12 wasn't in there?

13          A           Yes, ma'am.

14          Q           You said, Mr. Coombs asked you if, it seems  
15 to you as if the cable was written from an open source  
16 of a CNN article. Was that your conclusion?

17          A           No. I was just saying if you look at the  
18 open source information, when the cable was written,  
19 maybe they could have got the information from the open  
20 source. That was just my opinion.

21          Q           But you don't --

1           A           No, I will never know.

2                   MS. OVERGAARD:   Thank you.

3                   THE COURT:   Any final redirect?

4                   MR. COOMBS:   No, Your Honor.

5                   THE COURT:   Temporary or permanent excusal?

6                   MR. COOMBS:   Permanent, Your Honor.

7                   THE COURT:   Mr. Ganiel, you're permanently  
8 excused.   You're free to go or you can stay here in the  
9 courtroom.

10                  THE WITNESS:   Thank you, ma'am.

11                  MR. TOOMAN:   At this time the defense would  
12 offer to read the stipulation of expected testimony  
13 found in the Defense Exhibit Bravo.

14                   (Whereupon a stipulation was read.)

15                  MR. COOMBS:   Your Honor, the defense moves  
16 into evidence Defense Exhibit Papa for identification  
17 as Defense Exhibit Papa.

18                  MR. FEIN:   Can we have a moment, Your  
19 Honor?

20                  THE COURT:   Yes.

21                   Any objection?

1 MR. FEIN: No, Your Honor.

2 THE COURT: All right. Defense Exhibit  
3 Papa is admitted.

4 MR. COOMBS: Your Honor, the defense calls  
5 professor Yochai Benkler to the stand.  
6 Whereupon,

7 PROFESSOR YOCHAI BENKLER,  
8 called as a witness, having been first duly sworn to  
9 tell the truth, the whole truth, and nothing but the  
10 truth, was examined and testified as follows:

11 MR. MORROW: You are Professor Yochai  
12 Benkler?

13 THE WITNESS: I am.

14 DIRECT EXAMINATION BY MR. COOMBS:

15 Q Professor Benkler, good morning.

16 A Good morning.

17 Q I want to start off by getting some  
18 background information on you. You are the Berkman  
19 professor for Entrepreneurial Legal Studies at the  
20 Harvard Law School?

21 A Yes.



1           Q           You are also the faculty codirector for the  
2 Berkman Center for Internet & Society at the Harvard  
3 Law School?

4           A           Yes.

5           Q           In 2011 you authored an article entitled:  
6 "A Free Irresponsible Press and WikiLeaks, A Battle  
7 Over the Soul of the Networked Fourth Estate."

8           A           I did.

9           Q           Sorry about butchering that title for you.

10          A           It's much too long, I assume.

11                      (Laughter.)

12          Q           Now, this article was subsequently  
13 published in the Harvard Civil Rights, Civil Liberties  
14 Law Review; is that correct?

15          A           It was.

16          Q           And as part of that article, did you  
17 conduct research on WikiLeaks?

18          A           I did.

19          Q           Did you also conduct research on the  
20 reaction to the disclosures in this case?

21          A           I did.

1           Q           And during your research for your article,  
2           did you review any documentation concerning the  
3           WikiLeaks media organization?

4           A           Yes, I did.

5           Q           And was one of these documents the Army's  
6           counterintelligence report on WikiLeaks?

7           A           It was the version that was then publicly  
8           available.

9           Q           Professor Benkler, are you prepared today  
10          to tell us about the historical background of the  
11          WikiLeaks media organization, the nature of the  
12          reaction to the WikiLeaks publication and your review  
13          of the Army counterintelligence report?

14          A           I am.

15          Q           Let's begin by learning a little bit more  
16          about you and your background.

17                      You obtained your bachelor's of law degree  
18          from Tel Aviv University?

19          A           I did.

20          Q           And when did you obtain that degree?

21          A           1991.

1           Q           You then obtained your juris doctorate  
2 degree from Harvard Law School?

3           A           I did.

4           Q           And when did you attain your degree from  
5 Harvard?

6           A           1994.

7           Q           Afterwards you were a law clerk to Justice  
8 Steve Pryor of the United States Supreme Court?

9           A           I was.

10          Q           When did you clerk for Justice Pryor?

11          A           The October '95 term.

12          Q           You then became an assistant and  
13 subsequently an associate professor of law at the New  
14 York University School of Law?

15          A           I was.

16          Q           And how long did you teach there?

17          A           About seven years.

18          Q           What subjects did you teach at NYU?

19          A           I taught communications law, internet law  
20 and policy, intellectual property as well as the first  
21 year property course.

1           Q           You were then subsequently a professor of  
2 law at Yale?

3           A           I was.

4           Q           And how long were you professor of law at  
5 Yale?

6           A           Four years.

7           Q           What did you teach at Yale?

8           A           Roughly the same subjects, minus property  
9 plus intellectual property.

10          Q           When did you become a member of the Harvard  
11 Law faculty?

12          A           In 2007.

13          Q           What subjects do you teach at Harvard?

14          A           The same subjects I've been teaching for 17  
15 years. The whole range of communications law,  
16 selective property, selective problems and internet  
17 law, et cetera.

18          Q           How many books have you published?

19          A           Thirty.

20          Q           How many articles have you published?

21          A           About 50.

1           Q           Your articles, they've appeared in  
2 prominent journals?

3           A           Yeah, Harvard Journal of Law Technology,  
4 NYU Law Review, et cetera.

5           Q           I imagine your articles have been cited  
6 often?

7           A           I hope so.

8           Q           And are you aware of how many times your  
9 articles have been cited?

10          A           It's hard to tell. Google Scholar has  
11 something over 4,000 cites for my book "Wealth Of  
12 Networks," about 1,600 cites for Coase's Penguin, which  
13 is one article.

14                    So number of thousands of times in law  
15 reviews and elsewhere.

16          Q           And my understanding, basically that would  
17 be kind of peer review where people would cite you for  
18 a proposition?

19          A           Yes, yes. There was a study in 2012 that  
20 found two of my articles as one from '99, one from 2002  
21 as the second most cited law article in any subject on

1 law for that year.

2                   Apparently a piece of mine was published  
3 back here on the political blogosphere as being  
4 identified as the best article on Political Science and  
5 Technology published in 2010.

6                   Those are the kind of peer assessments we  
7 get.

8           Q           You also received a \$100,000 award from the  
9 Ford Foundation for your work in the field of internet  
10 freedom and access; is that correct?

11           A           Yes, I did.

12           Q           And what was that award for?

13           A           This was on the occasion of Ford  
14 Foundation's 75th anniversary. They recognized several  
15 people they described as visionaries for understanding  
16 certain domains and seeing how they change the future  
17 and this was for my work on internet and open access.

18           Q           You also speak at conferences?

19           A           I do.

20           Q           And how frequently?

21           A           Probably about once a month, maybe 10 times

1 a year.

2 Q And in general, what are the topics that  
3 you speak about?

4 A The range of my research, ranging from  
5 basic spectrum policy, wireless policy all the way to  
6 network society, network innovation. But also  
7 obviously network -- for the future of journalism.

8 Q You received a Lifetime Achievement Award  
9 from Oxford?

10 A I did.

11 Q When was this?

12 A In 2012.

13 Q When did you become the faculty codirector  
14 for the Berkman Center for Internet & Society at  
15 Harvard?

16 A I was asked to become faculty codirector as  
17 soon as I joined the faculty in 2007.

18 Q Can you tell us what the Berkman Center's  
19 mission is?

20 A The Berkman Center is one of the pioneer  
21 centers. It's a university-wide center. It's a center

1 intended to provide for cross-disciplinary effects on  
2 internet and the society and vice versa.

3 Q When was the Berkman Center established?

4 A Formally in '98 with a gift from the  
5 Berkman Foundation. It has its roots in the center  
6 founded by Professors Nesson and Zittrain in '96 at the  
7 law school and then it became university-wide center in  
8 2008 soon after I was director.

9 Q And what sort of issues does the Berkman  
10 Center research?

11 A It really researches a broad range of  
12 issues that are pertinent to the net. We have probably  
13 the most authoritative technical study of censorship  
14 and filtering, technical analysis of censorship and  
15 filtering throughout the world.

16 We have a group working on digital media,  
17 and youth, that is one of the leading centers for  
18 studying the effects on youth, to a wide range of  
19 things I do with my own groups.

20 The Federal Communications Commission asked  
21 me to do a review of broadband policy when they were



1 preparing their national broadband plan that resulted  
2 in a 330-page review. Work on wireless spectrum policy  
3 that resulted in my being asked to join the Spectrum  
4 Task Force report of the President's Council of  
5 Advisers on Science and Technology on Spectrum.

6 Work on distributing innovation and  
7 reorganization of information production and the  
8 network which is probably why I'm on the World Bank's  
9 Knowledge Advisory Commission.

10 And as well as obviously work on the  
11 network public sphere and collaboration, we have a big  
12 project with the MIT trying to map and study generally  
13 the networked public sphere debate on the net but also  
14 specifically the various models of journalism and  
15 interactions.

16 Q And can you tell the court about the World  
17 Bank? You mentioned that you are on the World Bank  
18 Organization?

19 A So this is, this is merely an advisory  
20 commission, as the bank is trying to understand both  
21 its own dynamics of research and innovation internally

1 and respond to changes in innovation and research  
2 throughout the world.

3 Q And how does the Berkman Center advance its  
4 research mission?

5 A We have a large number of affiliate and  
6 faculty from both the university itself and other  
7 institutions. We have several dozen fellows who are  
8 research fellows doing work in collaboration with each  
9 other or individually. We have a large number of  
10 research staff and research assistants both technical  
11 and in the social sciences.

12 And we have a series of seminars and  
13 workshops and research teams that apply these diverse  
14 methods to various questions.

15 Q During the time that you have been there  
16 have you ever conducted any research and writing on  
17 what is called the network Fourth Estate?

18 A Yes, absolutely. I've been working for  
19 generally on the influence of the internet on democracy  
20 essentially since the mid 90s.

21 My 2006 book, "Wealth of Network, How

1 Social Production Transforms Markets and Freedom," was  
2 in general about the change in models of information  
3 production. I had two chapters essentially dedicated  
4 to the question of changing in politics and changing in  
5 the public sphere.

6 Part of that was understanding how we come  
7 to know things in the public sphere and essentially  
8 what is the future of journalism as it were.

9 I then began to focus for explicitly after  
10 2009 on network journalism and the effects of  
11 networking journalism.

12 Q The book that you mentioned, "The Wealth of  
13 the Networks, How Social Production Transforms Markets  
14 and Freedom," did that book receive any recognition?

15 A Yes, it did. It received a couple of --  
16 well, several awards.

17 Q Can you tell the court about some of those  
18 awards?

19 A It was, it was designated the best book on  
20 science, technology and politics published in three  
21 years by the American Political Science Association.

1                   It received a Distinguished Book Award from  
2   the American Sociological Association about sociology  
3   and technology and a number of other things I  
4   mentioned, communications business.

5           Q       Now, this book, has it been translated, my  
6   understanding has it been translated in at least four  
7   different languages?

8           A       It's been translated into the major romance  
9   languages, Spanish, Italian and French, Polish,  
10   Macedonian, yes.

11          Q       And you mentioned that you received an  
12   award from the American Political Science Association.  
13   What is that association?

14          A       That's the premiere professional  
15   association of academic political scientists.

16          Q       And then I think the other one was the  
17   American Sociological Association?

18          A       Similarly, that's the premiere association  
19   of professional academic sociologists.

20          Q       Did there come a time when you began to  
21   specifically focus on the network Fourth Estate?

1           A           Yes, early 2009 there came a substantial  
2 new degree of interest in the influence of the network  
3 on journalism.

4                       It's a very similar phenomenon to what we  
5 saw in software in the late '90s, what we saw in music  
6 in the early 2000s, what we saw in video in the mid  
7 2000s.

8                       Traditional journalism began to take  
9 notice. There was a Federal Trade Commission hearing  
10 that I was invited to talk to about that question of  
11 the future of journalism that was trying to understand  
12 whether there were policy preventions. So this became  
13 a time when it was publicly significant or I was  
14 invited to come talk about it and I began to spend more  
15 time specifically on the model of journalism and its  
16 interaction with the network.

17           Q           Can you give a, a general, I guess,  
18 description for what is the network Fourth Estate?

19           A           The network Fourth Estate is the set of  
20 practices, organizing models technologies, that  
21 together come to fill the role that in the 20th Century

1 we associated with the free press. Essentially the  
2 cluster, if we could, of the Fourth Estate as the way  
3 in which the press provides a public check on the three  
4 classes of branches of government.

5 The network Fourth Estate is essentially  
6 the cluster of practices and technologies and  
7 organizations that fill that role in the 21st model of  
8 network information production.

9 Q And how do issues involving the network  
10 Fourth Estate fit into the Berkman Center?

11 A Oh, they're absolutely central. We study,  
12 perhaps more importantly than anything else, the ways  
13 in which the internet affects democracy and the basic  
14 question of how the media and the Fourth Estate relates  
15 to the network is absolutely central.

16 We actually have just now gotten funding  
17 for a major portion in this area in collaboration with  
18 MIT, media lab. So it's absolutely central to the  
19 Berkman Center's mission.

20 Q Professor Benkler, let's discuss the  
21 article that you wrote on the network of the fourth

1 estate, dealing specifically with WikiLeaks in more  
2 detail. Okay?

3 A Yes.

4 Q I'm showing you what has been marked as  
5 Defense Exhibit Golf for identification.

6 Do you recognize that?

7 A I do.

8 Q And what is that?

9 A That is the article that I published in the  
10 Harvard Civil Liberties Review.

11 Q When was that article published?

12 A May 2011.

13 Q When did you begin your research for this  
14 article?

15 A In April of 2010, right after the release  
16 of the helicopter video.

17 Q The Apache video in this case?

18 A Yes.

19 Q When you began your research, what did you  
20 set out to investigate?

21 A Well, I was intrigued. When this came out

1 it was clear that Reuters had been trying to get access  
2 to the footage in two years in traditional means. This  
3 seemed like an interesting connection between network  
4 models and traditional media.

5 It was a success where the traditional  
6 model, one of its most famous practitioners, writers,  
7 was unable to get the information in terms of  
8 retrieving the material.

9 And it was released in the National Press  
10 Club which provided a bridge between new media and old  
11 media.

12 So the combination of these things  
13 intrigued me and I thought it would be a very good case  
14 study for how new network models are beginning to  
15 interact more formally with the traditional models so  
16 that's when I started working on this.

17 Q And you said that it was released, the  
18 Apache video was released within the National Press  
19 Club?

20 A Yes.

21 Q Can you talk about that just for a second?



1           A           So --

2           Q           Like what is the National Press Club?

3           A           Yeah, it's a location and organization in  
4 Washington, D.C. that in many senses represents the  
5 core of the establishment of traditional journalism so  
6 it was that not congruity between a completely  
7 distributed model and the core representation location  
8 of traditional media that I found so interesting.

9           Q           And can you tell us about the research that  
10 you conducted for this article?

11          A           You mean what did I do in terms of  
12 research?

13          Q           Correct.

14          A           This is primarily reading a lot of news  
15 reports, over a thousand, online research to see what  
16 was written online, historical views, historical  
17 searches that are time limited in order to see what  
18 prior things have been written, internet articles,  
19 reviews of the WikiLeaks site itself to see if the  
20 message had significantly changed over time.

21                      Looks at the history of Wikipedia articles

1 to see how it was understood on Wikipedia over time.

2 Those kinds of things.

3 Q These types of materials and sources, are  
4 they typically relied upon by academic professionals in  
5 your field?

6 A It's one of the methods we use. I also use  
7 other methods as well. But certainly this sort of  
8 first draft of history, looking at a lot of publicly  
9 available written materials is one important method  
10 that we use when we try to understand broad trends,  
11 particularly when we try to understand the qualitative  
12 substance rather than providing merely quantitative  
13 representations, yes.

14 Q How long did you spend researching for this  
15 article?

16 A About eight months until the very last  
17 version in March 2011 at the end of the editorial  
18 process, so about eight months.

19 And I kept researching obviously because  
20 though I didn't expect it when I started working, it  
21 became a much more live subject by the time I had

1 finished working on it.

2 Q And did you conduct any research to learn  
3 about the WikiLeaks journalistic organization?

4 A Yes.

5 Q What did you review?

6 A Roughly the same kinds of materials.

7 Q And can you describe the, basically in  
8 broadbrush, the type of materials that you considered  
9 to learn about WikiLeaks?

10 A Again, a wide range of, a wide range of  
11 news articles to see how it was portrayed. A wide  
12 range of online materials.

13 I'd say the one additional piece was when I  
14 published the very first draft of the article or didn't  
15 publish -- when I put it up online, which I often do in  
16 order to get commentary from people so I can improve  
17 it.

18 I got an e-mail from Julian Assange with a  
19 variety of annotations where I was right, where I was  
20 wrong, where there was more material. And I used that  
21 much the way that I would use information from an

1 interviewee in a more interview based model of  
2 research.

3 So to some extent, as the footnotes in the  
4 article show, I describe it as Assange says so-and-so  
5 and this and this in this particular portions of the  
6 annotations.

7 And in some places it sent me back to do  
8 more research where he raised ambiguities or disagreed  
9 with other sources, characterizations of the events and  
10 I just used it as an impulse to go into more research  
11 of the same kind.

12 Q And are these sources typically relied upon  
13 by academic professionals in your field?

14 A Yes, I think they are.

15 Q Based upon your research, did you reach any  
16 conclusions as to how WikiLeaks fit into the network  
17 Fourth Estate?

18 A Yes, I did.

19 Q Did you also study and learn about the  
20 historical background of WikiLeaks, how it was viewed  
21 at one particular time and how it is currently being

1 depicted?

2 A Yes, I did.

3 Q And based upon your research study and  
4 writing on this topic, did you ultimately reach any  
5 conclusions regarding WikiLeaks and how it fit within  
6 the network Fourth Estate?

7 A Yes, I did reach that conclusion. The  
8 article was, this article has been, as best I can tell,  
9 the most widely cited academic article on WikiLeaks, at  
10 least according to Google Scholar.

11 Q In comparison to other articles, how many  
12 more times has this been cited just in double or  
13 triple?

14 A So this article, again, based on Google  
15 Scholar has been cited about twice as often as the next  
16 most cited source which is David Lee and Luke Harding  
17 wrote the book "Inside WikiLeaks" which was written by  
18 the true guardian reporters who work on the publication  
19 of these materials. And this article has been cited  
20 almost twice as often.

21 Q And, again, when people cite your article,

1 is that how peer review is done in your field?

2 A It's certainly considered a standard  
3 measure of influence of an article, the degree to which  
4 people say, this is what I rely on for the best  
5 assessment of this or that issue, yes.

6 MR. COOMBS: Your Honor, at this time the  
7 defense would request the court recognize Professor  
8 Benkler as an expert in the subject matter of the  
9 network Fourth Estate. We intend to use that expertise  
10 then to specifically testify about how WikiLeaks fits  
11 within the network Fourth Estate.

12 MR. MORROW: One moment, Your Honor.  
13 Your Honor, I'd like to exam briefly.

14 THE COURT: Go ahead.

15 VOIR DIRE BY MR. MORROW:

16 Q I want to start by asking you about the  
17 network Fourth Estate. Is that a term that you coined?

18 A Yes, it is.

19 Q Can you, when did you coin that term?

20 A Possibly in this article.

21 Q So this is a -- prior to summer of 2011

1     when this article was formally published in the Harvard  
2     Civil Liberties Review, this term had not been used by  
3     other people in your field?

4             A           The term had taken hold since the  
5     publication of my 2006 book was broader, the network  
6     public sphere. And that has become more or less a  
7     term-of-art in terms of trying to understand the  
8     structure of the network and democracy.

9                        What I did here was to try to narrow the  
10    specifics of focus and that's largely become, I'd say,  
11    a fairly normal and standard way of talking about it  
12    now.

13            Q           And the network Fourth Estate or the fourth  
14    estate refers to journalism in general?

15            A           Mostly it refers to journalism when we're  
16    talking about its role in the construction of  
17    democracy, more on the watchdog function specifically  
18    around the more broadly journalism.

19            Q           When you put network in front of that, what  
20    networks are you talking about?

21            A           I'm talking particularly about the cluster

1 of technological, organizational and practical and  
2 practice-based changes that have been characterized by  
3 the shift to public question us to computation,  
4 communication, ubiquitous sense and storage which is  
5 really the set of changes that I've been writing about  
6 since the mid '90s. So there's a cluster of typical,  
7 organizational changes that we have seen rereleased in  
8 software since the mid '90s. They're primarily related  
9 to the rise of the internet and have appeared and  
10 reappeared and multiple industries over this time have  
11 been affected in this form.

12 Q When we think about the network sometimes  
13 we think about sort of exclusively the internet. How  
14 does the -- when you describe the network Fourth  
15 Estate, are you referring primarily to the internet or  
16 are you referring primarily how the internet interacts  
17 with other traditional forms or older forms of  
18 information distribution? How's that work?

19 A So essentially what happened with the --  
20 what happened with the introduction of ubiquitous  
21 computing is that the core physical resource we need to



1 be productive in this set of domains became widely  
2 distributed in public information. The core storage  
3 facilities, the core creative human resources, the  
4 creativity, the insight became distributed throughout  
5 the population.

6 And so to think of it purely in terms of  
7 the internet as I think too narrow, that's a lot of  
8 what I've been trying to explain in the last 17 years.  
9 It's much more a combination not only of the technical  
10 side of the internet but also the organizational  
11 adaptation.

12 One of the things that's happened is people  
13 realize that you can't have all the smartest people and  
14 all the resources working in the same organization.

15 So we have seen a much greater distribution  
16 in networks that even though they use the internet,  
17 what's important about the network structure is  
18 actually permissions, who's allowed to work on what  
19 resource or assignments of work assignments and you get  
20 essentially these organizational networks that  
21 transcend traditional boundaries, these resource and

1 permission networks that transcends the boundaries of  
2 traditional properties layered over a technological  
3 network that actually has the materials. It's really  
4 this -- that's why I resist a little bit as describing  
5 it just the internet. It's more layered than that.

6 Q So really it's more about the -- that was a  
7 lot of -- I was trying to follow along. But really  
8 it's more, about -- really how information is, what,  
9 shared among --

10 A It's how it's produced. It's how it's  
11 shared. Let me give you an example so it's completely  
12 irrelevant so it doesn't influence the course of our  
13 material here from research that we're conducting now.

14 Maybe you remember about a year and a half  
15 ago there was a major Wikipedia shutdown for a day.

16 There was a major protest over a statute  
17 that was introduced, a bill that was introduced in  
18 Congress.

19 One of the things that happened there as we  
20 have been studying now is that who was producing the  
21 information was very different from the traditional

1 model. You had a few commercial sites like Tech Dirt  
2 that was incredibly important in doing the initial  
3 investigating.

4 You had a Wiki box, one law professor  
5 writing their own law doing a core analysis of a new  
6 bill. There is a little bit of traditional media but  
7 there's a non-profit organization that writes together  
8 with it.

9 So it's this fact that you very differently  
10 see of information production throughout the network,  
11 each doing what they're particularly good at and then  
12 feeding into what becomes the single understanding that  
13 we have that's really what I'm talking about.

14 The internet facilitates it, distributes  
15 the computation, facilitates it, but it's really this  
16 distribution of a sense who does what and who is  
17 accredited to do what and if we used to once be able to  
18 turn on the TVs and there was Walter Cronkite and that  
19 was the way -- it simply can't work that way anymore.  
20 That's really what I'm talking about.

21 Q Have you been qualified as an expert

1 before?

2 A No, I haven't.

3 Q And so you haven't been qualified as an  
4 expert in network Fourth Estate?

5 A When you say qualified, I assume you meant  
6 in a courtroom --

7 Q Yes.

8 A No, yes, other people would qualify me as  
9 an expert but not in a courtroom.

10 Q That's what I mean.

11 To your knowledge, has anyone ever been  
12 qualified as an expert in a network Fourth Estate?

13 A I have no idea.

14 Q In a courtroom?

15 A I have no idea.

16 MR. MORROW: Your Honor, this is a  
17 distinguished academic and obviously very smart man,  
18 but the government's position is that the scope of the  
19 network Fourth Estate or at least how he's described it  
20 now is somewhat unrelated to the, or disassociated from  
21 his opinions about WikiLeaks as a, whether or not

1 they're a journalist organization.

2 THE COURT: I'm not quite sure I understand  
3 that.

4 MR. MORROW: Well, I'm not quite sure I  
5 understand the network Fourth Estate, but.

6 THE COURT: Am I understanding you  
7 correctly in saying that you're basically looking at,  
8 you know, in the last century traditional news media  
9 and the way people got news was through newspapers.  
10 Before that, I don't know, a telegram or something like  
11 that or cable. As technology evolved, now you're  
12 getting more people on the internet that are sharing  
13 things?

14 THE WITNESS: That's at the core of it.

15 THE COURT: But you're studying the  
16 evolution of how people get news or develop news?

17 THE WITNESS: Yes. Yes.

18 THE COURT: I understand your objection to  
19 potential opinions that may be given but the scope of  
20 the expertise in developing new technology, or new ways  
21 of --

1                   MR. MORROW: We have no objection to any of  
2 that, in that sense.

3                   THE COURT: Well, I assume, he's going to  
4 be testifying about how WikiLeaks fits into news  
5 network Fourth Estate.

6                   MR. MORROW: That's correct. I guess you  
7 can see how the testimony goes and we can raise  
8 additional objections to relevance as they come.

9                   THE COURT: All right. I'll go ahead and  
10 accept him as an expert in that area. But I will be  
11 ensuring that the testimony that's given is relevant.

12                   DIRECT EXAMINATION BY MR. COOMBS:

13           Q           Professor Benkler, let's start off by  
14 talking about your research on WikiLeaks. Okay?

15           A           Yes.

16           Q           How is WikiLeaks formed?

17           A           As best we know from the available  
18 documents on the site itself, it describes itself as a  
19 collection of Chinese activists, mathematicians,  
20 journalists from several other countries who came  
21 together in order to create a platform for providing

1 transparency.

2 Q When did WikiLeaks become an online  
3 presence?

4 A WikiLeaks began, WikiLeaks the domain name  
5 is registered in late 2006. The first sample document  
6 was placed online in December of 2006 with the  
7 supposedly secret Somali court order. But that's more  
8 rumor and early moves.

9 The first real instance of a genuine break  
10 is in August of 2007 with the publication of an  
11 independent, of an independent report on corruption in  
12 the government of Daniel arap Moi and Kenya.

13 And then later on, later in 2007 with the  
14 publication of the count to operating procedures in  
15 November of 2007.

16 Q Based upon your research, what type of  
17 organization is WikiLeaks?

18 THE COURT: A time period?

19 BY MR. COOMBS:

20 Q At any time period.

21 A WikiLeaks is a --

1 MR. MORROW: Objection, Your Honor.

2 THE COURT: Yes.

3 MR. MORROW: We would ask that the scope of  
4 his testimony be limited to the time period from 2007  
5 to March 2010.

6 THE COURT: Is the government going to go  
7 forward in cross-examination on any future time period?

8 MR. MORROW: Future.

9 THE COURT: Future time period with  
10 WikiLeaks.

11 MR. MORROW: It's limited to that.

12 THE COURT: What is the relevance of what  
13 it is after the charged defenses and publications?

14 MR. COOMBS: I think the relevance is  
15 because the government's theory in this case is by  
16 giving information to WikiLeaks, PFC Manning gave  
17 information to the enemy. They charged that after the  
18 March of 2010 timeframe.

19 They've also charged him with wanting  
20 disclosure of classified information --

21 THE COURT: Getting rid of the March



1     timeframe. With respect to relevance of WikiLeaks  
2     through the period of publication of whatever the  
3     government is alleging that PFC Manning gave, what is  
4     the relevance of what they're like after that?

5                 MR. COOMBS: The Defense's position is the  
6     relevance after that time period goes into really how  
7     the government has charged the case or how they're  
8     trying to portray WikiLeaks as an organization that  
9     would provide information to the enemy or somehow not a  
10    legitimate journalistic organization. That type of  
11    argument has only been advanced after the March 2010  
12    time period.

13                And Professor Benkler will testify how  
14    WikiLeaks was viewed prior to this.

15                THE COURT: I understand that. I'm just  
16    looking at beyond the publications of the charged  
17    documents so, for example, WikiLeaks now, WikiLeaks in  
18    2012. What's the relevance?

19                MR. COOMBS: Well, again, the idea of  
20    WikiLeaks is being anything but a legitimate  
21    journalistic organization that was advancing

1 transparency, was not anti American, was not aiding the  
2 enemy in any way, shape or form or designed to do that,  
3 was not an organization that the enemy went to.

4 The government has introduced evidence,  
5 subsequent to March of 2010, where they're saying,  
6 well, you know, Osama Bin Laden asked people to go to  
7 WikiLeaks to pull information. That's subsequent to  
8 March 2010.

9 The government's whole argument seems to be  
10 premised on creating WikiLeaks as a bad organization,  
11 as Julian Assange as a bad person.

12 That whole train of thought is created  
13 really after March of 2010. It's created by big  
14 government and how they reacted to the releases in this  
15 case and how they reacted and Professor Benkler will  
16 testify how they reacted in a very uneven-handed manner  
17 where you have other organizations like the New York  
18 Times, like The Guardian, like Der Spiegel, publishing  
19 the same information and yet the diatribe coming from  
20 the government was not aimed at them, it was aimed at  
21 WikiLeaks.

1           So the government in their case has  
2   introduced evidence as to how the enemy apparently  
3   viewed WikiLeaks after March 2010. That even when you  
4   look at that evidence and the court does, you'll see  
5   that the request for that information wasn't because of  
6   the enemy saying, hey, we need to go to WikiLeaks to  
7   get this.

8           When you look at that document -- I can get  
9   the exact Prosecution Exhibit, the individual says, due  
10  to the government's response, and I believe it's the  
11  Secretary of Defense's response, claiming that  
12  WikiLeaks is aiding the enemy, we need to go look at  
13  this documentation, go pull these documents for us.

14          So that is why the defense believes  
15  Professor Benkler should be allowed to talk about how  
16  that trend changed from viewing WikiLeaks as a source  
17  of legitimate journalistic information, and he'll also  
18  testify that they received awards on internet freedom  
19  and index on internet freedom for its work, to now  
20  being public enemy number 1.

21          And trying to lump my client with that in

1 order to bootstrap in some argument that there was an  
2 aiding of the enemy.

3 THE COURT: Go ahead with your questioning  
4 and I'll take the questions as they come. Go ahead.

5 BY MR. COOMBS:

6 Q So Professor Benkler --

7 MR. FEIN: Ma'am, can the government still  
8 be heard on this?

9 THE COURT: Go ahead.

10 MR. MORROW: We'll make a couple of brief  
11 comments. The charge (inaudible) were completed up  
12 to --

13 THE COURT: The publications were later.

14 MR. MORROW: That's correct, Your Honor,  
15 but the one piece, the first wanton piece caused to be  
16 published. Every (inaudible).

17 What the defense is referring to now is,  
18 you know, first of all there's no evidence that PFC  
19 Manning knew any of this, which speaks to the relevancy  
20 of this entire thing.

21 But, again, the actual completed offenses

1     happened in May 2010. That should be -- up to May 2010  
2     if we're going down the road of what was WikiLeaks and  
3     how were they viewed or how were they portrayed, et  
4     cetera. Or how they viewed themselves.

5                 Mr. Coombs mentioned enemy possession.  
6     Again, he's (inaudible) the elements. The element is  
7     the knowledge of WikiLeaks prior to May 2010.

8                 We have to prove possession of the  
9     intelligence by the enemy. But that's a separate  
10    element entirely.

11                THE COURT: All right, government, I don't  
12    agree. I see the relevance on the type of journalistic  
13    organization, if they are a journalistic organization,  
14    is relevant to the recklessness or if you will, I agree  
15    with PFC Manning who at the time goes to his intent.

16                There's, we'll wait to the get to the  
17    questions about government reactions, because I am not  
18    seeing the relevance of that. Go ahead.

19                MR. COOMBS: Yes, Your Honor.

20    BY MR. COOMBS:

21                Q         So let's go back to the question I asked.

1 Prior to -- actually, I'm going to move on to what  
2 conclusions again did you reach about WikiLeaks as a  
3 organization based upon your research?

4 THE COURT: Is there any foundation for  
5 that?

6 MR. COOMBS: The research that he did on  
7 WikiLeaks, ma'am, that I covered.

8 THE COURT: All right. Go ahead.

9 A Based on the research that I have done I  
10 see WikiLeaks as an organization that fulfilled a  
11 discrete role in network journalism of providing a  
12 network solution to leak-based investigative journalism  
13 that in the past was done only by relatively large and  
14 unified organizations and now could be done in a  
15 network mode.

16 The primary role that I saw WikiLeaks as  
17 playing -- so, for example, just to give a little bit  
18 of context.

19 In software development what happened with  
20 network production is that it used to be all Microsoft  
21 or IBM, everything. What happened with network

1 production is you got a decomposition of the functions.

2           So, for example, in operating systems  
3 you've got a group developing the Linux currently and  
4 then you've got a whole bunch of other groups some  
5 commercial, like Novell or Red Hat, some non-profit,  
6 some volunteer networks each pulling together that  
7 currently with a bunch of other things to create the  
8 operating system that we know as the Linux operating  
9 system.

10           WikiLeaks did essentially the same thing.  
11 If you imagine the Washington Post finding Deep Throat,  
12 creating the conditions of secrecy for the, for the  
13 source, and then being able to protect that source,  
14 that required a certain amount of heft. If you think  
15 of the Pentagon papers, again you receive it, you do  
16 the analysis but you also have the money to go and  
17 defend it in court.

18           In the network tremor there are a lot of  
19 organizations that don't have the organizational heft  
20 to do all of that but you do have the ability to  
21 provide it.

1                   So (inaudible) provides a core of the  
2   software; WikiLeaks provides a solution for how network  
3   journalism can stabilize leak-based investigative  
4   journalism in the face of diminishing newsroom, much  
5   more organizations, much less of a well-structured way  
6   of defending it in court.

7                   So that's what I see WikiLeaks in this  
8   context of doing in this organization. Providing a  
9   discrete but critical component of what in the past was  
10   always integrated in a single organization.

11           Q           From your research, how did WikiLeaks fit  
12   in with, did it fit in with the idea of a journalistic  
13   organization?

14           A           Yes, absolutely. I think it did.

15           Q           And based upon your explanation there, how  
16   did other more traditional journalistic organizations  
17   then take advantage of what WikiLeaks was doing?

18           A           So they would take the materials and  
19   provide more context, more analysis, integrated into  
20   storage, obviously much wider than WikiLeaks itself.  
21   So if you think of journalism from the mentor function



1 is about gathering information relevant to public  
2 concern and its dissemination to the public, a lot of  
3 these other organization spent the time working both on  
4 the relevancy and the dissemination, while WikiLeaks  
5 did essentially the gathering, the authentication and  
6 the initial selection for dissemination to these  
7 further analyses.

8 Q Now, as part of your research, did you look  
9 at how WikiLeaks was viewed prior to the releases?

10 A Yes, absolutely.

11 Q And how did you do this?

12 THE COURT: Releases of what?

13 BY MR. COOMBS:

14 Q Prior to the releases charged in this case?

15 A Among other things, I read every single  
16 news report that mentioned the word WikiLeaks from  
17 before March 31st, 2010 at least as they appeared on  
18 the West Law database, about 700 articles.

19 Q Prior to 2010, what type of documents did  
20 WikiLeaks publish?

21 A So it published a range of documents.

1 These included, for example, internal documents from  
2 the Swiss Bank Julius Baer relating to mechanisms for  
3 helping clients hide Cayman Islands accounts for tax  
4 avoidance. They included materials from the Icelandic  
5 bank which apparently had engaged in activities that  
6 ended up after the description in WikiLeaks resulting  
7 in an investigation of the Serious Fraud Unit in the UK  
8 because they had defrauded some local British  
9 municipalities before they bankrupt in 2008 or after  
10 the crisis, I mean.

11 They had described, for example, they had  
12 published internet filtering software lists that were  
13 used in Australia and Denmark and Norway as antiporn  
14 filtering but were extremely crudely designed so that  
15 created a significant political backlash.

16 Ironically WikiLeaks itself in Australia  
17 was placed within this list but that's a context in  
18 which the public calculation of the list led to public  
19 debate and opposition and eventually the abandonment of  
20 the policy.

21 They published a copy of what was then a

1 secret negotiated trade treaty in the  
2 anticounterfeiting trade treaty that was enormously  
3 controversial politically across the 20 countries in  
4 which it was proposed.

5 After its publication ultimately it  
6 resulted in protests throughout most of the EU member  
7 states and European parliament rejected it and wasn't  
8 willing to ratify or the member states were not.

9 Then, of course, there were a variety of  
10 materials on the US. Some of which were reported in  
11 the counterintelligence report and some of which I've  
12 already mentioned, the Camp Delta operations.

13 Q Did WikiLeaks have a published mission  
14 statement prior to April 2010?

15 A Yes, they did. They -- their mission  
16 statement was primarily focused on exposing corruption  
17 and unethical behavior of authoritarian governments in  
18 Asia, former Soviet countries, some countries in  
19 Africa, but in the mission statement they also said  
20 they would support exposures of unethical behaviors by  
21 people everywhere in every country.

1           Q           And how did WikiLeaks go about trying to  
2           expose unethical practices, illegal behavior and  
3           wrongdoing within corrupt corporations and governments?

4           A           They created what was essentially a safe  
5           platform for people who were close to the materials,  
6           who had knowledge on the inside to leak materials for  
7           public revelation and the platform was intended both to  
8           provide secrecy and security for the person leaking and  
9           to provide a mechanism for some level of authentication  
10          of the voracity of the documents before they were  
11          placed online and in the ideal model also a place for  
12          people to comment on the materials after they were made  
13          online.

14                    Although that was a less significant  
15          component at the end of the day of the, of the site  
16          when it actually was in operation.

17          Q           Did WikiLeaks target any specific companies  
18          for its leaks?

19          A           It's hard to say that it targeted  
20          particular companies. It was more a question of what  
21          came in the door that was actually there.

1           As I said, some of the most important  
2 corporate issues were not from the US. There was very  
3 little that was US specific. There was a document from  
4 J.P. Morgan that could have been --

5           THE COURT: What time frame are we talking  
6 about?

7           A       This is in the 2007 to 2009 timeframe.

8           There was a document from J.P. Morgan that  
9 was arguably a how-to on insider trading for clients  
10 without getting caught but that was about it from the  
11 US side.

12           I'd say the most significant corporate  
13 disclosures that got really public attention were the  
14 Julius Baer Swiss Bank story.

15           There was a major story in the UK of a  
16 Swiss registered UK based oil exploration company that  
17 had an internal engineering report showed that it  
18 actually knew that it had dumped toxic waste off the  
19 coast of the Ivory Coast.

20           There were several banking related issues.  
21 There was one banking related issue with a government

1     bailout of Northrop Bank in the UK that was Barclay's  
2     Bank. There was a company, Icelandic Banks as I  
3     mentioned.

4                     Those were the type of corporate corruption  
5     related things that got attention.

6             Q             And did WikiLeaks target any specific  
7     countries for its leaks?

8             A             Formally it targeted, its primary formal  
9     statement was it was particularly interested in  
10    authoritarian countries as I said, Asia, Sahara,  
11    Africa, post Soviet republics and the Middle East.

12                    Realistically I would say the single most  
13    important disclosure from an authoritarian country was  
14    the disclosure of the Green Ban program in China. This  
15    was a program that was built in China as a way of  
16    protecting youth from porn. It was supposed to be  
17    essentially Chinese PC were supposed to be impregnated  
18    with a filter that would protect children from porn.

19                    When the specifications were leaked and  
20    released on WikiLeaks, it turned out that the program,  
21    in fact, does a lot more censorship than the government

1 wanted and despite the fact that it's not a democratic  
2 government, there was sufficient public uproar that the  
3 program was abandoned. That was the single most  
4 important investigative act that resulted in a really  
5 act of authoritarian countries.

6 Obviously the Kenyan, the report on Kenyan  
7 ex judicial killings that was subject of the award from  
8 Amnesty International was another major authoritarian  
9 country.

10 I'd say most of the revelations came from  
11 completely democratic countries or broadly democratic  
12 countries, like Thailand where another internet  
13 censorship project was exposed showing that the  
14 government among other things was trying to filter the  
15 king and I because of the way, the old version, because  
16 of the way it portrayed the king. And the filtering  
17 things that I mentioned before.

18 Q Based upon those articles, you indicated  
19 that WikiLeaks received an award. What awards did  
20 WikiLeaks receive?

21 A WikiLeaks received two major awards. One

1 from the British, the British organization, Index On  
2 Censorship, which is a major, a major organization  
3 tracking press freedom throughout the world. And the  
4 other was from Amnesty International. The censorship  
5 was 2008 and Amnesty International was 2009.

6 Q At this point did WikiLeaks have any  
7 published statement regarding how it viewed freedom of  
8 the press?

9 A Yes, WikiLeaks, WikiLeaks had a published  
10 statement. It cited essentially it was (inaudible) in  
11 the Pentagon papers case and its core argument was that  
12 the role of the free press is to assure that the  
13 government does not deceive its people and that a free  
14 press is the only guarantor that the government cannot  
15 deceive its people, specifically mentioning a variety  
16 of other components of that decision. But that was the  
17 core.

18 The core argument was that transparency was  
19 absolutely necessary to good government and to  
20 democracy.

21 Q And based upon your overview of WikiLeaks'



1 activities prior to April of 2010, how was WikiLeaks  
2 portrayed online and in print media?

3 A So I'd say there are somewhere between two  
4 and three major periods.

5 The first six to eight months from the  
6 launch more or less in late 2006 until the middle of  
7 2007 there's a lot of speculation for obvious reasons  
8 the organization hadn't really started to function.

9 This is the time in which we see most of  
10 the standard responses to any kind of new network  
11 organizations. Very similar to what we saw with free  
12 software and how it was described in the late '90s,  
13 similar to what we saw with Wikipedia and how it was  
14 described in the early 2000s. And that's essentially,  
15 how are we going to get authenticity, how are we going  
16 to get responsibility and how are we going to know what  
17 the quality is. A lot of speculation.

18 Also, I think this was a transition where  
19 Wikipedia suddenly became respectful and I think that's  
20 why WikiLeaks picked the name, even though it was  
21 completely unrelated.

1                   So there was a question of how would  
2 people, how would this thing work? Could anybody look  
3 at the documents and then decide. How would we then  
4 preserve any kind of anonymity?

5                   There was a lot of concern over whether  
6 there would be too much exposure and too little  
7 authenticity, together with excitement about here's  
8 this new model and what was the future of journalism.

9                   Once WikiLeaks actually began to operate in  
10 mid 2007 to late 2007 the narrative shifted quite a bit  
11 more towards a whistle blowing organization, a whistle  
12 blowing site based on the very small number of leaks  
13 that became public at the time.

14                  I'd say the major transition point came  
15 around the issuance of the injunction in the Julius  
16 Baer case in early 2008. And that was the moment at  
17 which really WikiLeaks was described widely through the  
18 press as a new online journalistic organization.

19                  In that case there was an amicus brief  
20 filed by the Reporters' Committee on Freedom of the  
21 Press, Gannett, Associated Press, the Newspaper Editors

1 Associates, all of them filed amicus briefs saying you  
2 can't shut this down.

3 The New York Times came out with an  
4 editorial that basically opened with the words roughly,  
5 new online journalism creates a new front in freedom of  
6 the press. It described WikiLeaks as a muck-racking  
7 site and analogized explicitly the shutting down of  
8 WikiLeaks by the injunction to shutting down a whole  
9 newspaper because of an -- (inaudible).

10 It was described as saying there was  
11 journalists and lawyers looking at the materials before  
12 they were argued under the Distinguished Advisory  
13 Board.

14 When WikiLeaks, for example, released  
15 congressional research service reports a few months  
16 later, Senator Lieberman came out and said we should be  
17 doing this and actually praised WikiLeaks  
18 substantially. The Federal Times, the paper for  
19 federal employees, said WikiLeaks is a site maintained  
20 by investigative journalists and transparency fans  
21 dedicated to open and transparent government.

1 Described it in these terms. Obviously there were many  
2 stories, some of them less explicit, but that's the  
3 tenor that began to emerge from Julius Baer later on  
4 throughout 2008 and really throughout much of 2009.

5 Q Prior to April of 2010, in your research  
6 did you see anything to connect WikiLeaks with a  
7 terrorist organization?

8 A No.

9 Q And prior to April 2010, did you see  
10 anything to connect WikiLeaks with any sort of  
11 terrorist groups providing information to terrorist  
12 groups?

13 A No.

14 Q I now want to ask you a few questions about  
15 how the portrayal of WikiLeaks began to change after  
16 they started publishing certain documents charged in  
17 this case. Okay?

18 A Yes.

19 Q Did the portrayal of WikiLeaks start to  
20 change in 2010?

21 A It did. Substantially.

1           Q           And when did this change begin?

2           A           I'd say the primary shift occurred around  
3 the, concomitant with the release of the Iraq war logs  
4 later in 2010.

5           Q           Now --

6           A           That's the portrayal in the media. Then  
7 there's a public response earlier than that after the  
8 release of the Afghanistan war logs.

9           Q           We'll talk about this in a moment. But I  
10 want to backtrack just for a second and go back to your  
11 article.

12                       One of the things that you considered in  
13 your article was a 2008 Pentagon report?

14          A           Yes.

15          Q           I'm handing the witness what has been  
16 marked as PD45. Do you recognize that?

17          A           I do.

18          Q           What is that?

19          A           This is the unclassified version of the  
20 report they looked at as part of research for this  
21 article.

1           Q           And based upon your review of this article,  
2 what was the PD45 largely based upon?

3           A           It was largely based on reading the  
4 WikiLeaks sites itself and on other open source  
5 materials, perhaps some news story, perhaps some  
6 research online.

7           Q           Did you see anything in the report that you  
8 couldn't also find in unclassified reporting on the  
9 internet?

10          A           Probably two things. There were --

11          Q           Before you talk about that, are those two  
12 things currently now in that document?

13          A           Yes.

14          Q           Are any of those things in a footnote?

15          A           No.

16          Q           Okay. So what were the two things?

17                   MR. MORROW: Objection. Relevance.

18                   THE COURT: What is your question?

19                   MR. COOMBS: My question was: Did he find  
20 anything in this document that was not already  
21 available in open source information?

1           The relevance part I'm going to talk about  
2   is how this article, which I believe the government is  
3   using PE45 to claim that PFC Manning should have known  
4   from this he would have actual knowledge that he was  
5   giving information to the enemy. I'm going to use  
6   Professor Benkler to describe the content of the  
7   document.

8           THE COURT: I can read the content of the  
9   document. Why do you need to do that?

10          MR. COOMBS: That's granted that you could,  
11   Your Honor, but Professor Benkler will talk about where  
12   the content of the document came from which I don't  
13   know if the court would know that intuitively from  
14   looking at the document and also explain, you know,  
15   basically some of the logical leaps in that document.

16          THE COURT: I'll let you go and talk about  
17   the document and what was in open sources. That's  
18   relevant.

19          MR. COOMBS: Okay, Your Honor.

20          THE COURT: I see the questions as they  
21   continue, go ahead.

1 BY MR. COOMBS:

2 Q So we actually don't really need to talk  
3 about the two items in particular.

4 So based upon --

5 A Basically it was almost all open source  
6 material.

7 Q Did you see anything in this document that  
8 supported the idea that WikiLeaks provided information  
9 to the enemy?

10 A No. What there was here were theoretical  
11 statements about how the enemy could come and use this.  
12 Particularly with a particular emphasis on how the  
13 enemy could try to use it for propaganda to inject  
14 false information and have perceptual management. But  
15 no really -- other than speculation, no evidence that  
16 there had actually been any use by any enemy.

17 Q Did the 2008 Pentagon report cite any  
18 evidence to suggest that the enemy, in fact, went to  
19 WikiLeaks?

20 A No, there was no evidence here that anyone  
21 had actually, that any enemy had in fact used



1 WikiLeaks.

2 Q In general, how would you describe this  
3 report?

4 A Frankly, it was, I thought, a relative  
5 mediocre effort --

6 THE COURT: I'm going, this, this witness  
7 is not an expert in intelligence. That is not  
8 relevant. Move on, please.

9 MR. COOMBS: Your Honor, our Defense's  
10 position is this is not intelligence. That's why I  
11 asked the question whether or not most of this item,  
12 most of the item came from open source.

13 The Defense's position is if you compared  
14 what's in this document with open source information in  
15 many regards it's pulled verbatim. So, for example --

16 THE COURT: You can ask all of those  
17 questions, just not an opinion on the value --

18 MR. COOMBS: The witness' testimony is what  
19 he reviewed and what he reviewed is the open source  
20 documentation related to WikiLeaks, in particular to  
21 WikiLeaks' website and used this article, this 2008

1 report, extensively in his article that he published.  
2 So he verified, he verified what was in the information  
3 in this article and everything in here is from open  
4 source.

5 THE COURT: That's fine. Just no opinions  
6 on whether it's speculation, whether it's -- he's not  
7 qualified to do that.

8 MR. COOMBS: The question I was asking him,  
9 Your Honor, what was his opinion of this article, if  
10 allowed, he would say this article is basically  
11 premised solely upon open source information.

12 THE COURT: That's fine.

13 MR. COOMBS: And speculation at that point.

14 THE COURT: That's fine.

15 BY MR. COOMBS:

16 Q Okay.

17 A This article was based on open source  
18 information. Many of its key judgments were  
19 speculative and were not supported by evidence in the  
20 document itself.

21 It included as a core statement both in the

1 executive summary and in the body and assertions that  
2 WikiLeaks does not engage in any authentication, an  
3 assertion that was already known at the time based on  
4 publicly available reports to be false, simply  
5 mistaken.

6 Because already at the time that this  
7 report was created there had already been a major shift  
8 in the understanding of how WikiLeaks was  
9 authenticating materials from roughly the same period.

10 There's a report in the New Scientist where  
11 Steven Aftergood from Federation of American Scientists  
12 who had been an early vocal critic of WikiLeaks  
13 precisely on the question of lack of authentication  
14 comes back and says, look, there are lots of leaks  
15 sites. What WikiLeaks has done is to professionalize  
16 the model of intake, selection and authentication.

17 This is a time at which only a month later  
18 the L.A. Times issues a report that compared this to  
19 another site, LiveLeak.

20 The thing that is special about WikiLeaks  
21 is that it authenticates and fewer than 1 percent of

1 the materials are potentially, are identified as  
2 potentially authentic.

3 So this is a time at which everybody in  
4 public knows that WikiLeaks is different in the sense  
5 that it authenticates. But the report, as a key part  
6 of its analysis, in the executive summary and the body  
7 says WikiLeaks has a stated policy of not  
8 authenticating, it's simply false, a mistake, not false  
9 in the sense of bad intent. Simply a mistake.

10 Q Does anything in the report support or  
11 undercut the determination that WikiLeaks is an  
12 investigative journalistic organization?

13 A No. Quite the contrary. I'd say that  
14 there are multiple references throughout the report  
15 that would lead a reasonable reader to see WikiLeaks as  
16 a journalistic organization.

17 At one point the report says on the 9th of  
18 November, 2007 WikiLeaks published an investigative  
19 report on such-and-such. In this case, it was on the  
20 use of chemical weapons by US forces.

21 In many places it describes WikiLeaks staff

1 writers or editors. It describes Julian Assange,  
2 WikiLeaks foreign staff writer, co-authors are repeated  
3 again and again.

4 The hull of Appendix B is a careful  
5 analysis of what WikiLeaks did in the context of  
6 staples of equipment which included, based on this  
7 appendix, computerized search and structuring,  
8 cross-referencing with open source material, provision  
9 of context.

10 Most journalistic organizations would be  
11 extremely proud to have the capacity to take a complex  
12 set of technical materials.

13 There's a point at which, for example, the  
14 report describes WikiLeaks reaching out to national  
15 ground intelligence of staff to verify a particular  
16 report regarding the battle of Fallujah and actually  
17 says, they had high journalistic professionalism in  
18 reaching out to try to assure fair use.

19 So I'd say that based on all of these,  
20 somebody that comes away reading this, states this is a  
21 journalistic organization that the author of the report

1 is worried about. But there is little doubt that it's  
2 a journalistic, hard-hitting journalistic investigative  
3 organization.

4 Q Is there anything in the 2008 Pentagon  
5 report that supports undercutting, treating WikiLeaks  
6 any differently than the New York Times?

7 A No, I don't think so. Its precisely these  
8 repeated references to investigative report, to staff  
9 writer, to foreign staff writer, to co-authors, to the  
10 disagree of analysis, frankly.

11 There are places in this report where the  
12 author disagrees with the legal interpretation of  
13 WikiLeaks' story.

14 So clearly there is investigation, there is  
15 a story, there is a framework with which the report of  
16 the article is arguing. These are the things at the  
17 very core of investigative journalism.

18 You find the fact under the context and  
19 create the critique. You walk away from this and you  
20 say this is what this organization is doing, at least  
21 if this is all you're reading about it. You worry

1 about it, but it's a journalistic organization.

2 Q I would like to talk about the article that  
3 you wrote and the various time periods that you marked  
4 as a, kind of a change in how WikiLeaks is being  
5 viewed. Okay?

6 A Yes.

7 Q I'd like to first start off with the  
8 publication of the Apache video charge in this case.

9 A Yes.

10 Q When was that?

11 A April 5th, 2010.

12 Q And how was the video released by  
13 WikiLeaks?

14 A The video was released in a press  
15 conference at the National Press Club.

16 Q How was the video received by the media at  
17 that point?

18 A I'd say there were split views. The New  
19 York Times wrote about this in the framework of saying  
20 with this release WikiLeaks is edging close to  
21 investigative journalism.

1           An advocacy described how WikiLeaks had  
2   five full time employees reviewing the materials. How  
3   they had, at least according to this report, 800 to a  
4   thousand area experts that were looking at the  
5   materials and trying to understand what was and was  
6   not. How they had collaborated with an Icelandic  
7   television station and spent \$50,000 to send two  
8   reporters over to Iraq to verify, provide context of  
9   the background.

10           So this was the New York Times' response.

11           The head of Reuters talked about the video  
12   as being incredibly troubling but something that was  
13   important to watch. But there was also a lot of  
14   criticism. There was a lot, this was, that the editing  
15   in particular was unfair.

16           I'd say Fox News was the primary proponent  
17   of that particular view, that the editing was very  
18   unfair and not appropriate.

19           Q       Now, I want to go to the next charge  
20   release. What was the next set of documents that  
21   WikiLeaks released?



1           A           These were the Afghan war logs in July of  
2   2010.

3           Q           Before publication, did WikiLeaks partner  
4   with any traditional media organizations?

5           A           Yes, it did. It partnered with the New  
6   York Times, the Guardian and Der Spiegel.

7           Q           What was the nature of the partnership?

8           A           WikiLeaks handled the materials over to the  
9   news organizations several weeks before publication.  
10   Agreed on a publication schedule on a joint publication  
11   schedule and then the newspapers were to release their  
12   stories as well as some of the materials at the same  
13   day that WikiLeaks would publish the underlying  
14   materials themselves.

15          Q           And --

16          A           I'm sorry.

17          Q           Go ahead, I'm sorry.

18          A           Both the newspapers and WikiLeaks would  
19   publish some portions, although in very different  
20   proportions.

21          Q           Based upon that publication how did the

1 view of WikiLeaks start to change, if at all?

2 A So there was a major -- there were several  
3 public statements by officials that I think began to  
4 shift publicly.

5 THE COURT: Yes?

6 MR. MORROW: Objection, Your Honor. Now  
7 we're getting into the reaction --

8 THE COURT: What is the relevance of that?

9 MR. COOMBS: The Defense's position is  
10 based upon both the -- and I can, if I have a break, I  
11 can give you the prosecution exhibit that references  
12 UBL reaching out to WikiLeaks.

13 The Defense's position is that rebuts the  
14 idea that the enemy would use WikiLeaks as a source of  
15 intelligence initially prior to these leaks because  
16 what happens is, essentially after these leaks start to  
17 happen, the government rhetoric against WikiLeaks makes  
18 them appear to be an enemy.

19 And that, that rhetoric is what drives the  
20 enemy to actually go look at WikiLeaks, not the actual  
21 publication of the information.

1                   So --

2                   THE COURT: Well, I've already taken  
3       judicial notice of statements that you've given me with  
4       respect to public comments about WikiLeaks.

5                   Why are we doing it through this witness?

6                   MR. COOMBS: Well, this witness, Your  
7       Honor, because of his article -- and that's basically  
8       part of the focus of the article is explaining how a  
9       journalistic organization is basically and especially  
10      in this country is changed from being a legitimate  
11      journalistic organization to being a terrorist  
12      organization based upon the response by the government.

13                  And the government, in this case, with how  
14      they charged it, they have relied upon the enemy,  
15      information of the enemy going to WikiLeaks which is  
16      after these comments that Professor Benkler will talk  
17      about occurred.

18                  Also when you look at both the UBL stip,  
19      the redacted and unredacted commander, I believe the  
20      stipulation which is PE's 153 alpha and PE183.

21                  THE COURT: Let me see those documents,

1 please.

2                   Actually, why don't we, this is a good time  
3 to take a 10-minute recess. I would like to see the  
4 documents that you're talking about before making a  
5 ruling on this issue.

6                   MR. COOMBS: Yes, Your Honor.

7                   THE COURT: Professor Benkler, during your  
8 recess don't discuss the testimony with anyone other  
9 than the counsel or accused. Court is in recess.

10                   (Brief recess.)

11                   THE COURT: Court is called to order. Let  
12 the record reflect all parties present when the court  
13 last recessed are again present in court.

14                   During the recess, I looked at what the  
15 defense wanted me to look at.

16                   I would like both parties to set forth  
17 their position.

18                   And defense I would like you to explain to  
19 me exactly where we are going with this witness'  
20 testimony and what you plan to do with it.

21                   Go ahead.

1 MR. COOMBS: Yes, Your Honor.

2 So the Defense's position is that the  
3 documentation that the court considered provides the  
4 relevant basis for why we want Professor Benkler to  
5 talk about how the view of WikiLeaks started to change  
6 as each of these releases started to happen.

7 The government has offered both the 2009  
8 Most Wanted List and the other documentation that we  
9 referenced in order to depict WikiLeaks as an  
10 organization that PFC Manning should have known would  
11 have given information to the enemy.

12 In fact, they actually had to prove he had  
13 actual knowledge that by giving it to WikiLeaks he was  
14 providing it to the enemy.

15 The Defense's position on this is that  
16 anyone looking at WikiLeaks prior to the charge  
17 releases, including the 2008 document produced by ASIC  
18 (phonetic), would have viewed WikiLeaks as a legitimate  
19 news organization.

20 The only argument to start to begin that  
21 begins after these releases happen and the government's

1 ultimate responses to each release and how that  
2 rhetoric gets amped up after each release.

3 And it is that and the Defense's position  
4 is where the government gets its argument that there  
5 should be any concern or knowledge on PFC Manning's  
6 part that WikiLeaks might provide information to the  
7 enemy.

8 Additionally, the Defense's position is  
9 that the enemy went to get this information only after  
10 the government's responses to the leaks and that's what  
11 prompted them.

12 So from the Defense's position this not  
13 only rebuts the idea that PFC Manning would have had  
14 any actual knowledge for the Article 104 offense, but  
15 it also for Specification 1 of Charge 2, it rebuts the  
16 idea of any wanting conduct by PFC Manning by choosing  
17 to release information to a legitimate news  
18 organization.

19 The actual release of that information was  
20 wrongful and he's accepted responsibility for that.  
21 But it was not wanton.

1           So the defense believes it was relevant for  
2 both the 104 offense and also with regards to  
3 Specification 2 of Charge 2.

4           Additionally, we would envision the  
5 government arguing that WikiLeaks was or is anything  
6 but a legitimate news organization. If they intend to  
7 do that, the defense believes we should be able to  
8 provide information that rebuts that.

9           And the information that Professor Benkler  
10 would provide would show how that view of WikiLeaks  
11 came to be and it really is, as a result of the  
12 government rhetoric in response to each of these  
13 releases that it even started to question whether or  
14 not WikiLeaks was a legitimate news organization.

15           The defense intends to go through each of  
16 the charge releases. We're currently at the Afghan  
17 SIGACTS. But we intend to the Iraq SIGACTS, to the  
18 diplomatic cables and then come to a conclusion.

19           We do not intend to go past just the actual  
20 release and the initial response by the government and  
21 how that response started to change the view, at least

1 in the public conversation of WikiLeaks both in the  
2 American public conversation, just in general, but also  
3 how the print media and news media started to portray  
4 WikiLeaks as now no longer part of the legitimate news  
5 organization.

6 But we're not going to go into the other  
7 aspects of Professor Benkler's article that talk about  
8 freezing assets of WikiLeaks or, you know, officials  
9 asking various companies, like MasterCard and Pay Pal  
10 and others to no longer participate. We're not going  
11 down that road, ma'am.

12 THE COURT: All right. Government, you  
13 just heard what the defense is planning to do.

14 What is the government's position?

15 MR. FEIN: Yes, ma'am. A few first to note  
16 for the record any references that the defense is  
17 arguing what PFC Manning might or might not have known  
18 is for argument and no evidence, first court of that.  
19 Only what was SIPR knew through the documents  
20 (inaudible) NCIR training he received.

21 The government's overall objection, Your



1 Honor, is the only material that is relevant is what  
2 was relevant during the time what PFC Manning could  
3 have known. So that would have been prior to  
4 essentially pretrial confinement forward.

5 And that would have been relevant to  
6 potentially been argument (inaudible) his knowledge on  
7 WikiLeaks and what WikiLeaks did or did not do.

8 So any evidence of the government's  
9 reaction after the commission of his offenses could be  
10 irrelevant to the charges in this case.

11 And that's true for Specification 1 of  
12 Charge 2 and the charge of Specification 2. So  
13 ultimately it's a timing issue, Your Honor.

14 And the government doesn't intend to argue  
15 at all about what WikiLeaks did or did not become.  
16 It's only at the time of the commission of the offenses  
17 what PFC Manning did or did not, should or should not  
18 have known.

19 THE COURT: Okay. I've considered the  
20 exhibits, I've listened to argument of counsel.

21 Mr. Coombs, if you confine your examination

1 to the leaks and the reactions thereafter, I will allow  
2 it.

3 MR. COOMBS: Yes, Your Honor.

4 BY MR. COOMBS:

5 Q So let's talk, let's go back to the Afghan  
6 SIGACTS, Professor Benkler.

7 When were these documents released?

8 A July of 2010.

9 Q And before that publication, what news  
10 organizations did WikiLeaks partner with?

11 A The New York Times, the Guardian and Der  
12 Spiegel.

13 Q And how was the publication of the Afghan  
14 SIGACTS accomplished or done?

15 A WikiLeaks gave the materials to the news  
16 organizations a few weeks prior to the publication.  
17 Each organization analyzed the articles as it did in  
18 its own professional process and organizations.

19 The four organizations agreed on a date to  
20 which the newspapers would release their stories and  
21 some set of the collection of logs and WikiLeaks would

1 release a larger section of the logs at the same time.

2 Q And did each of the news organizations  
3 publish ultimately all the Afghan SIGACTS?

4 A No, they didn't. They published parts of  
5 them depending on what their stories were.

6 Q Now, did the reporting of the Afghan  
7 SIGACTS by WikiLeaks and other news organizations  
8 generally report -- this is again in general, generally  
9 report on issues of importance to the public?

10 A Yes. They were considered to be important.  
11 There were no clear major smoking guns that were  
12 raised. Broadly speaking, they created a public record  
13 of ground view realities of the war and that's how they  
14 were understood.

15 There were some discrete things that were,  
16 that raised more public concern but they were viewed  
17 very wide and reported on very widely as matters of  
18 broad public concern.

19 Q How did the United States respond, again in  
20 general, to this publication?

21 A A couple of responses. Admiral Mullen said

1 WikiLeaks would have blood on its hands. General Jones  
2 reported publicly to have said that WikiLeaks was  
3 endangering lives. Those were the primary public  
4 responses.

5           Although Secretary Gates in a letter to  
6 Senator Carl Levin in response to a formal answer, to a  
7 formal report on what the damages done by the  
8 disclosures were, reported that to that point none had  
9 occurred.

10           Q           Based upon this time period, did you see  
11 any change in how WikiLeaks was being viewed or started  
12 to be viewed?

13           A           There were some reports in the media  
14 broadly that were questioning the, the organization but  
15 the shift did not, in a significant way, begin until  
16 later in the stories.

17           Q           Did the same questioning of WikiLeaks apply  
18 equally to the other news organizations that WikiLeaks  
19 had --

20           A           No, absolutely not. Both the government  
21 and other media had no similar critique of the other

1 organizations, of the New York Times, the Guardian, of  
2 the Der Spiegel for reporting on and making available  
3 some of the war logs.

4 The wrath was reserved purely for  
5 WikiLeaks.

6 Q Now, what was the next set of documents or  
7 documents that WikiLeaks released?

8 A These were the Iraq SIGACTS in October of  
9 2010.

10 Q And before the publication of Iraq SIGACTS  
11 did WikiLeaks partner again with these news  
12 organizations?

13 A The same three news organizations.

14 Q And how was the publication of the Iraq  
15 SIGACTS handled?

16 A In similar ways. Again, materials were  
17 available, a publication date was agreed on and the  
18 materials were published alongside the stories.

19 Q And again, in general, how was the  
20 publication of Iraq SIGACTS part of the, of importance  
21 to public and public consumption?

1           A           So again, these were raised very publicly  
2           as an important insight into how the war was going on.

3                       It was understood and reported by different  
4           media, different ways. The New York Times only  
5           emphasized more of the texture and the reality and the  
6           sense of providing the American public with a sense of  
7           what the war looked like. There were discrete  
8           disclosures that were understood to have actually  
9           raised significant differences from what the public  
10          record had been before and these were reported on as  
11          discrete revelations. That was the way in which it  
12          was.

13          Q           How did the United States respond to this  
14          publication?

15          A           The response was similar, although the  
16          direct response in terms of the demand for  
17          non-publication was similar. The public response was  
18          not as clearly vocal as it was to the first instance or  
19          what it would become to the last of the instances.

20          Q           And what was the next set of documents  
21          released by WikiLeaks?

1           A           These were the Embassy cables. The first  
2   272 of which were released on November 28th of 2010  
3   known as the Embassy cable release.

4           Q           And before this publication, did WikiLeaks  
5   partner about traditional media organizations?

6           A           Yes, they did. They partnered with the  
7   Guardian, Der Spiegel, Lamont and El Pais. They had  
8   excluded the New York Times this time because the New  
9   York Times had run an extremely derogatory story on  
10   Assange alongside with the Afghan war logs and this was  
11   seen as inappropriate by WikiLeaks.

12                    But then the Guardian passed on the  
13   materials to New York Times so that as a practical  
14   matter the collaboration worked very similarly to the  
15   first round, except for the addition of Lamont and --

16           THE COURT: Did you say the derogatory  
17   story was after the release of the Afghan war logs?

18           A           Alongside the release of -- I'm sorry, the  
19   Iraq war logs. I apologize. I misspoke.

20           Q           In general, again, how was the public  
21   representation to the release of the diplomatic cables?

1           A           It was odd. These cables were released in  
2 a much more controlled and measured way than either of  
3 the prior two, even though the prior two themselves had  
4 had the redaction and control in the WikiLeaks set.

5                       But the response is hard to define as  
6 anything about shrill. Secretary of State Clinton  
7 described it as an attack on the international  
8 community.

9                       Vice President Biden on a television  
10 interview said that Assange was more like a high tech  
11 terrorist than the Pentagon papers.

12                      Representative Steve King who was then  
13 incoming chair of the Homeland Security Committee in  
14 the House called for WikiLeaks to be described, to be  
15 defined as a foreign terrorist organization.

16                      Senator Feinstein, who was then the chair  
17 of the Senate Intelligence Committee, called for  
18 prosecution of Assange under the Espionage Act.

19                      And Senator Lieberman called for, who was  
20 then chair of the Senate of the Committee on Homeland  
21 Security, called for companies to stop providing



1 services to WikiLeaks.

2 Q Did traditional media assist in the  
3 government, the government's efforts, I guess, in  
4 delegitimizing WikiLeaks?

5 A Absolutely. I'd say there were three  
6 distinct components to the traditional media response.

7 One was primarily typified by Fox News, the  
8 Weekly Standard, so this was a context in which Bob  
9 Beckel, who had been at one point Assistant Secretary  
10 of State in the Carter administration speaks on Fox  
11 News and says that, says of Assange, he's a traitor,  
12 he's a treason, I don't believe in the death penalty.  
13 There's only one solution, illegally shoot the son of a  
14 bitch.

15 Or William Crystal in the Weekly Standard  
16 writes that the first order of business in the meeting  
17 of the White House and the congressional leadership  
18 needs to be how to destroy, degrade, destroy WikiLeaks.  
19 Describing, describing the organization in these terms.

20 Governor Sarah Palin in Tweeted that Weekly  
21 Standard report and said of Assange, he's an

1 anti-American operative with blood on his hands. Why  
2 don't we deal with him with the same urgency that we  
3 deal with al-Qaeda and Taliban. That was the response  
4 on that side.

5 The New York Times continued the same  
6 approach that it begun to develop right after the Iraq  
7 logs.

8 Tom Freedman, probably the best known op ed  
9 writer of the New York Times wrote an op ed in which he  
10 talked about there being two major threats to the  
11 world, one was China and the superpower, and the other  
12 was super empowered individuals like WikiLeaks and  
13 compared those to the major threats to the world.

14 New York Times editor Bill Keller published  
15 an 8,000 word New York Times Magazine description of  
16 the events in which the same WikiLeaks and the same  
17 Assange that the news reporting part of the  
18 organization eight months earlier had called a  
19 muck-raking site, a small online site that provides  
20 information that governments and corporations would  
21 like to be, would like to keep quiet, suddenly started

1 to describe WikiLeaks as a secretive cartel of  
2 antisecrecy vigilantes. He described Assange in terms  
3 of like badly smelling as though he hasn't bathed.  
4 Repeatedly tried to denigrate the professionalism.

5 Finally, there was similar poor reporting  
6 in a study I did of all of the stories in the first two  
7 weeks following November 28th.

8 Over half the news stories simply falsely  
9 reported that WikiLeaks had dumped thousands or 250,000  
10 cables without, without any redaction. And only  
11 20 percent of stories reported accurately that 272, not  
12 250,000, simply 272 cables were released. They were  
13 released in exactly the form that they were released by  
14 the traditional media organization in the redacted form  
15 that they were released.

16 So this combination of poor reporting,  
17 attack by the New York Times and very vigorous attack  
18 on the right wing certainly resonate with the initial  
19 set of statements from more government officials to  
20 completely shift the view of WikiLeaks from what it had  
21 been a mere eight months earlier.

1           Q           Now, I want to end by asking you a few  
2 questions about the network Fourth Estate.

3                   THE COURT:   Of what?

4                   MR. COOMBS:   I'm sorry ma'am, the network  
5 Fourth Estate.

6 BY MR. COOMBS:

7           Q           How does the network Fourth Estate differ  
8 from traditional media?

9           A           The network Fourth Estate differs from  
10 traditional media along similar lines to which we see  
11 software development or video differ from traditional.

12                   That is to say, instead of having a  
13 relatively small number of organizations organize  
14 around release life, concentrated capital ownership, in  
15 the mid 19th Century it was the major presses, later on  
16 it was the recording studios, where you have a single  
17 set of operators working in a single organization.  
18 What you see now is a much diverse set of actors.

19                   You see important roles for some  
20 traditional media like the Times, Guardian and BBC, but  
21 you see them complemented by other smaller for profit

1 organizations that have low cost, low return, like  
2 snopes.com or Tech Dirt that are either specific to an  
3 area or specific to a function.

4 You see non-profit organizations like the  
5 Sun Life Foundation, like investigative journalism who  
6 work on a non-profit level like WikiLeaks and are able  
7 to contribute.

8 You see academic centers producing suddenly  
9 something that instead of being only academic is part  
10 of the journalism. So fact checked on work is an  
11 example of that.

12 And you also see distributed networks of  
13 individuals rising at certain moments. You might see  
14 the blog of an academic economist suddenly becoming a  
15 important source of editorials for analysis. You might  
16 see the blog of a particular academic or particular  
17 activist suddenly show up.

18 So it's individuals, non-profits,  
19 academics, small commercial interacting with the large  
20 traditional organizations that today create this new  
21 model of network journalism.

1           Q           How has the traditional media historically  
2 responded to the network Fourth Estate?

3           A           They started out with a rather dismissive  
4 just some guy in his pajamas kind of statements about a  
5 decade ago.

6                       Then I'd say around 2009 there was panic,  
7 this thing is going to destroy our industry, where it's  
8 going to be the future of news. I'd say, again, this  
9 follows so many of the other industries that have  
10 encountered this.

11                      Today there's much of a recognition that  
12 there is a need to incorporate these methods.

13                      So if in 2006 the only photos from the  
14 London underground bombings were people with their  
15 cellphones and that was unique and new, today, after  
16 the Arab Spring where the primary source of video for  
17 street protests was people on the streets, you see the  
18 BBC, the Guardian, integrating are you there, let us  
19 know. Do you have a particular experience? Do you  
20 have particular focus? They're beginning to integrate  
21 these distributed models into, into their own future

1 development.

2 The same way that software couples,  
3 40 percent how actually produced open source software,  
4 there's denial, panic and then incorporation and  
5 growth.

6 The Columbia School of Journalism, the  
7 needing School of Journalism, in the US there's  
8 (inaudible) who develops the Guardian's online  
9 framework which is largely considered to be the most  
10 sophisticated integration to actually teach the new  
11 generation of journalists what everybody understands  
12 they need to know, how to operate in this new  
13 environment.

14 Q Is WikiLeaks a member of the network Fourth  
15 Estate?

16 A Absolutely.

17 Q Why do you believe that?

18 A It is -- journalism is made up of many  
19 things. WikiLeaks doesn't do interviews and pound the  
20 pavement.

21 Again, when we say WikiLeaks, we're really

1 talking about before the severe degradation that  
2 followed the attack on the organization that we  
3 described just before.

4           WikiLeaks was a solution to a very  
5 particular and critical component of the way in which  
6 investigative journalism, muck-raking confined  
7 instances of corruption.

8           It's -- we don't only live from Pentagon  
9 papers or Watergate or the NSA wire tapping scandals of  
10 2005 and the more recent months.

11           But it's a clear, distinct component of  
12 what in the history of journalism we see as high  
13 points, where journalists are able to come in and say,  
14 here's a system operating in a way that is obscure to  
15 the public and now we're able to shine the light.  
16 That's what WikiLeaks showed how to do for the network  
17 public sphere.

18           WikiLeaks may fail in the future because of  
19 all these events, but the model of some form of  
20 decentralized leaking, that is secure technologically  
21 and allows for collaboration among different media in



1 different countries, that's going to survive and  
2 somebody else will build it.

3 But WikiLeaks played that critical role of  
4 that particular critical component of what muck-raking  
5 and investigative journalism has always done.

6 MR. COOMBS: Thank you, Professor Benkler.  
7 No further questions.

8 THE COURT: Cross-examination?

9 MR. MORROW: Yes, Your Honor, I'd like to  
10 go for a little bit and potentially break for lunch at  
11 that point. Consider some other things that we may  
12 want to show Professor Benkler and come back after  
13 that.

14 THE COURT: Any objection to that?

15 MR. COOMBS: No objection, Your Honor.

16 THE COURT: Go ahead.

17 CROSS-EXAMINATION BY MR. MORROW:

18 Q Professor Benkler, I'd like to start by  
19 sort of talking about your research methodology.

20 A Yes.

21 Q Now, you became interested in the topic of

1 WikiLeaks sometime in April 2010; is that correct?

2 A Yes.

3 Q And that was because of the Apache video  
4 release?

5 A Yes.

6 Q Now, your research methodology was  
7 essentially to collate everything that had every been  
8 written on the subject of WikiLeaks, right?

9 A That was the ambition.

10 Q That was the ambition. What was your  
11 research methodology?

12 A I tried to pull together what I could find  
13 that had been written publicly in traditional media as  
14 well as online as well as prior instances of the  
15 WikiLeaks site itself.

16 Q So you looked at online news sources?

17 A Yes.

18 Q You looked at traditional news sources?

19 A Yes.

20 Q You used the internet archives specifically  
21 to look at how WikiLeaks looked at particular periods;

1 is that right?

2 A I did.

3 Q And you didn't think necessarily that the  
4 internet archived information was particularly helpful,  
5 to your knowledge?

6 A Mostly what it showed me that there was no  
7 major change and that the origin story was very similar  
8 to the way that it had been initially.

9 Q And so once you sort of had gotten all  
10 these articles and sources together, you did almost all  
11 of the reading yourself?

12 A Yes.

13 Q And you did all of the writing for this  
14 paper?

15 A Yes.

16 Q But you had research assistants essentially  
17 do the collecting for you?

18 A Yes.

19 Q And you were interested in how WikiLeaks  
20 was viewed prior to the leaks related to this case?

21 A Yes.

1           Q           And you were interested in how they were  
2 viewed after the leaks related to this case?

3           A           Yes.

4           Q           And so you read practically every article  
5 on WikiLeaks you could find from 2007 to March of 2010.  
6 That is one block of your analysis or one block of your  
7 research; is that correct?

8           A           Yes.

9           Q           As you were reading, you would mark  
10 instances where you saw sort of a good or bad  
11 reference?

12          A           Yes.

13          Q           And can you describe that process, please?

14          A           I read the articles. When I identified  
15 things that were particularly critical, I would mark  
16 them when I identified things that were particularly  
17 read of them, or really more than a passing reference I  
18 would mark them. When I would identify things that  
19 were particularly positive I would mark them. So that  
20 I could come back and report on them.

21                   Then as I wrote I went back and forth

1 between the materials and my notes.

2 Q In some of these earlier articles you were  
3 looking at, I believe you would say valence, tone and  
4 content?

5 A Valence, were they positive or negative.  
6 Tone, in terms of their general view and the particular  
7 contents. What they were describing.

8 (Inaudible.)

9 THE COURT: What is valence?

10 THE WITNESS: Whether they are positive are  
11 negative.

12 THE COURT: Keep going, I'm sorry.

13 A That was it.

14 Q This was actually reporting mostly about  
15 WikiLeaks; is that correct?

16 A I was looking primarily for reporting about  
17 WikiLeaks and when WikiLeaks had, I was trying to  
18 understand what WikiLeaks had actually found. I was  
19 trying to understand how it was described but also what  
20 were the stories that were not simply on the side but  
21 actually moved the needle in the public reporting. So

1 both of those. That's the content part.

2 Q And you had practically every single  
3 article on WikiLeaks post March 2010 as well; is that  
4 correct?

5 A I'd say I had a very strong emphasis on  
6 materials, a very discrete strong emphasis on materials  
7 after the Embassy cables but I also read the articles  
8 in between, yes.

9 Q And again, it was sort of the same  
10 methodology, you would read an article, look at the  
11 tone and content and then or look at whether it's a  
12 good or bad reference, make highlights, make notes and  
13 look at the tone and content; is that correct?

14 A That was the general, that was the general  
15 method, yes. Specifically for the study right  
16 (phonetic) arm, for the two weeks right after I  
17 actually sorted them into accurate, inaccurate and  
18 vague in order to be able to make the statement or in  
19 order to be able to find out how many or what  
20 proportion of the stories that mentioned some number of  
21 cables correctly described the 272 cables as opposed to

1 said thousands or 250,000.

2 Q How did you determine whether something was  
3 accurate or inaccurate?

4 A For that particular period?

5 Q Yeah.

6 A There was a fact, there was a fact, 272.  
7 Then there were several more and then there was several  
8 more and then there was thousands as opposed to  
9 250,000. I made the judgment of what I knew to be the  
10 state of the world and I compared it to what was  
11 reported.

12 Q So that was that period?

13 A Yes.

14 Q What about the period between March and  
15 November of 2010? Same --

16 A I did not make the same sorting about what  
17 was accurate and what was not. And I made the best  
18 judgment again, less formally structured. 272 is not  
19 250,000. Some things are easy. Some things are  
20 harder.

21 So I made the judgment based on my best

1 understanding of everything I read about WikiLeaks,  
2 about how consistent what I read was with what I had  
3 known from the prior materials.

4 Q During your research and writing, I believe  
5 you said yesterday that this wasn't really quantitative  
6 analysis?

7 A Yes, sometimes you can try to do  
8 quantitative analysis with content. Sometimes it's  
9 harder because you're looking for more qualitative  
10 understanding and it's very hard and inaccurate  
11 essentially. You pretend to have data but, in fact, it  
12 turns out to be inaccurate when you're trying to  
13 quantify things that are more of one's best  
14 understanding. At which point what you try to do is  
15 you have a single researcher read through and form a  
16 consistent opinion of that one researcher.

17 Q And would you say that at least in your  
18 field sometimes people do quantitative analysis?

19 A Absolutely. I do, too.

20 Q Okay.

21 As you were reviewing, you were writing on



1 the articles and sort of setting them aside and sort of  
2 categorizing them again, tone, content, that sort of  
3 thing?

4 A Yes.

5 Q Had you employed this specific research  
6 methodology in the past?

7 A To specific, to specific case studies, yes.  
8 So, for example, I reported in a chapter of  
9 Wealth and Networks on -- as I was trying to explain  
10 how the blogosphere of queries, questions, I did a  
11 similar study of critique of Debow machines that were  
12 voting machines that were questioned in the 2002  
13 election. I did the similar -- so yes, I have in the  
14 past tried to do case studies as particularly richly  
15 detailed.

16 There's also a tradeoff between what you  
17 can identify in very precise quantitative terms that  
18 are usually very thin and don't give you the texture of  
19 the event and what you can do with textures,  
20 qualitative analysis. And I tried to use both methods  
21 for wherever they are most useable.

1           Q           As part of your research, you didn't view  
2 any videos of Julian Assange or any other WikiLeaks  
3 individuals in the course of your research?

4           A           I didn't really look for videos of Assange  
5 or others as a particular source, no.

6           Q           Sometime in February 2011 I believe you  
7 posted your article on your personal website, right?

8           A           I did.

9           Q           And that's sort of a normal process?

10          A           It's certainly normal for me. I've been  
11 publishing my work openly since the late '90s. To me  
12 it's an important way of getting feedback from people  
13 who I don't happen to know on what is right and wrong  
14 about what I do.

15          Q           Then the summer of 2011 it was published?

16          A           Yes.

17          Q           And you said earlier that prior to its  
18 formal publication you received an e-mail from Julian  
19 Assange; is that correct?

20          A           Yes.

21          Q           And that e-mail had your article as an

1 attachment to the e-mail?

2 A I believe that's what it was. That it was  
3 an attachment with annotations to the documents. I  
4 didn't go back to look to see whether it was that or  
5 two documents side-by-side.

6 Q But in any event, Mr. Assange provided you  
7 comments to your article?

8 A Yes.

9 Q And he provided his perspective on several  
10 events?

11 A Yes.

12 Q And he provided you additional information  
13 that at that point you had not looked at?

14 A Yes.

15 Q And you cited Mr. Assange's annotations in  
16 your article?

17 A Yes, I did.

18 Q But not for any facts necessarily?

19 A I didn't cite them for the truth of their  
20 content. If I was citing something for the truth of  
21 its content, I cited it specifically as this is the

1 view asserted by Mr. Assange in the annotations.

2 If the question was, did you, here's a  
3 mistake in fact of what you have, I went back and did  
4 the research for myself and formed my own opinion on  
5 these particular facts.

6 There is no point that I simply took the  
7 assertion of fact without noting it's an assertion of  
8 fact from this.

9 Q So his comments did make you go back and do  
10 additional research --

11 A Yes.

12 Q -- or look at the research?

13 A Yes.

14 Q Now, when you were conducting the research  
15 on the news media (inaudible) WikiLeaks, you did not  
16 really consider the news outlet itself; is that  
17 correct? You weren't trying to assign value to the  
18 news outlet?

19 A It depends for what. I'd say that if what  
20 I was trying to do was understand whether a particular  
21 revelation had been discussed, I ignored the particular

1 source.

2 If what I was trying to understand was the  
3 relative likely truth value, I provided some weight to  
4 the quality that I believe the new cite to have but it  
5 depended on the context.

6 Q So you looked at the quality of the  
7 assertion in some cases?

8 A Yes.

9 Q Would you agree that the tone and content  
10 was more important to your research than who exactly  
11 was saying? So the tone and content and the quality of  
12 the assertion is more important than who actually was  
13 saying it?

14 A It was a mix I would say of both. They  
15 informed each other. I certainly cared a lot of the  
16 tone and particularly the content to try to understand  
17 what was the unfolding of the events. But I couldn't  
18 ignore completely the quality of the publication.

19 Q Your conclusion is that sort of  
20 pre-Manning, so early 2007 to 2010, WikiLeaks was  
21 generally a somewhat responsible news organization?

1           A           As I said, I think there was a lot of  
2 concern and speculation early on.

3                       I think there was an increasing degree of  
4 comfort with the message of the organization over the  
5 course of 2008 and I'd say that from the Julius Baer  
6 affair in early 2008 and increasingly so, over the  
7 course of 2009, the tenor of the articles, not  
8 obviously uniform, but the tenor of the articles was  
9 one that increasingly saw WikiLeaks as a major new  
10 player.

11          Q           Over the course of 2010, you talked about  
12 this with Mr. Coombs, WikiLeaks became more integrated  
13 with traditional news?

14          A           Yes, they did. Not always easily.

15          Q           Not always easily but it happened and on  
16 several releases there was some kind of integration?

17          A           Yes.

18          Q           But at least in your article, eventually  
19 your conclusion is that the government's reaction to  
20 WikiLeaks was sort of overwrought?

21          A           Yes, well, overwrought was the term that

1 Secretary Gates used for it and I thought it was a  
2 remarkably well placed assessment.

3 Q Yes. And I'm referring mainly there to the  
4 reaction of the release of the Afghan database, the  
5 Iraq database and the Department of State cables?

6 A Yes.

7 Q And you thought this overwrought reaction,  
8 how Secretary Gates said it, was more likely than some  
9 of the other public statements made by various  
10 officials?

11 A Yeah.

12 Q You're siding on that statement versus --

13 A Yes, I had spent a significant amount of  
14 time reading up on this organization. I had formed a  
15 certain view based on the reading that I described to  
16 you earlier. And then I met these assertions of high  
17 tech terrorist, terrorist organization they were simply  
18 incongruous with everything I had done in my research  
19 and seen this organization in seeing. There was a deep  
20 discontinuity and incongruity between what I knew to be  
21 the case, at least based on my research to that point,

1 and these public assertions that, yes, I would say that  
2 I assigned a truth value higher to the report that said  
3 it was overwrought to say of Assange that he's a high  
4 tech terrorist than to statements that actually made  
5 those assertions.

6 Q And your assigning a value in that  
7 particular case was based in part on Secretary Gates'  
8 position. He was the Secretary of Defense at the time,  
9 right?

10 A I made that assessment based on my reading  
11 of the history of WikiLeaks, my own judgment based on  
12 my own research and the incongruity.

13 I cited Secretary Gates because I thought  
14 it was important to see that even someone within the  
15 administration who had responsibility in this area,  
16 could see how implausible the response was. It was for  
17 that aspect, the fact that you didn't need to be an  
18 outsider, you could actually sit on the inside and  
19 still see that the response was an implausible  
20 response.

21 But the foundation for my foundation was my



1 own research and understanding based on my own deep  
2 knowledge of how the organization had been seen a mere  
3 few months earlier.

4 Q Right. But in large part, Secretary Gates'  
5 position or at least his description of the reactions  
6 being sort of overwrought, your value, assigning a  
7 value to sort of that position was based in some part  
8 on some of the other news articles that you read where  
9 there were people that were unnamed sources that also  
10 sort of confirmed what Secretary Gates says; is that  
11 correct?

12 A The unnamed source is a little bit  
13 different.

14 This here I referred to Secretary -- so  
15 there are two statements of Secretary Gates they cite.  
16 The first one is in a press conference with regard to  
17 the response, with regard to the Embassy cables being  
18 overwrought. The claim that embarrassing and  
19 uncomfortable, sure, but damaging to foreign policy,  
20 not likely. That was with regard to the Embassy  
21 cables.

1           There's another reference I make which I do  
2   assign more to Secretary Gates' judgment than to others  
3   because it was in a formal letter in response to a  
4   formal request for assessment from a relevant  
5   senatorial oversight committee and that I take to be a  
6   public document and that's why I give that higher  
7   support.

8           Secretary Gates in the context not of press  
9   release and managing public perception but in the  
10   context of a formal response to a formal request to the  
11   relevant oversight committee makes the claim and that I  
12   give its own truth value on that institutional basis.

13          Q       Now, one of the other facts you cite in  
14   your article in support of your assertion that the  
15   government reaction was sort of an overreaction, was  
16   the fact that PFC Manning, at the time of the article  
17   in your opinion had been held in solitary confinement  
18   for eight months; is that correct?

19          A       That was one of the issues that I referred  
20   to in that article, yes.

21          Q       And you actually referred to it in several

1 places in the article?

2 A I did.

3 Q You said that as of that writing Manning  
4 had been in solitary confinement for over eight months  
5 and denied pillows and sheets and locked in a cell for  
6 24 hours a day?

7 A That was the information as then available  
8 in public open media that were available to me, yes.

9 Q And that, again, that was derived from news  
10 sources?

11 A Yes.

12 Q As well as Mr. Coombs' blog. I believe you  
13 cited Mr. Coombs' blog in your article as well?

14 A Yes, I did.

15 Q And that was because that fact was  
16 basically the fact that was sort of the primary public  
17 source reporting on the conditions of his confinement,  
18 right?

19 A Right.

20 Q And then you stated that the treatment  
21 seemed consistent with the Pentagon's reported emphasis

1 on the terms against potential terms of release for  
2 Manning to undermine WikiLeaks?

3 (Inaudible.)

4 A Yes, I did. yes, if you look at the ASIC  
5 report, it basically seems to come to a conclusion that  
6 it's very hard to suppress information once it's on  
7 WikiLeaks and that the core target needs to be on trust  
8 as the center of gravity.

9 In other words, to undermine the concept  
10 that WikiLeaks is a place where a leaker can go and  
11 trust that they won't be revealed. So in order to  
12 prevent this distributed leaking, it's necessary to  
13 increase the fear, at it were, or the constraint on  
14 potential leakers.

15 A judgment I made at the time based on the  
16 public reports of PFC Manning's treatment and my  
17 understanding of the, one of those key judgments of the  
18 report was that treating PFC Manning very badly was,  
19 would be consistent with the goal of deterring future  
20 whistleblowers.

21 Q That's not necessarily your judgment today,

1 but it was your judgment at the time based on what was  
2 available to you in open source?

3 A This is what you asked me now.

4 Q Now, Professor Benkler, you've never met  
5 anyone who was a volunteer for WikiLeaks or an employee  
6 with WikiLeaks; is that correct?

7 A You mean as a formal interview?

8 Q Formal interview as part of your article?

9 A No, no.

10 Q And you were never an adviser to WikiLeaks  
11 formally or informally?

12 A No.

13 Q And you've never been a volunteer for  
14 WikiLeaks either now or before, prior to your time as  
15 a --

16 A No.

17 Q Just generally, you were never really a  
18 party to any of the accounts cited by news  
19 organizations in response to the leaks?

20 A I'm not sure I understand that question.

21 Q You weren't there --

1           A           I'm not an actor. I'm an observer. I'm an  
2 academic observer, not an actor in these events.

3           Q           Okay. Now, when you were writing the  
4 article, and I think you already said this, but you  
5 didn't seek interviews with others who may have dealt  
6 with WikiLeaks or Julian Assange?

7           A           No, I didn't.

8           Q           You didn't speak with the editors at the  
9 New York Times or the Guardian or Der Spiegel or  
10 anywhere else?

11          A           No, I did not.

12          Q           And why not?

13          A           Different methods of research in different  
14 modes.

15                    There are certainly academic disciplines  
16 that work very heavily with interviews, be they  
17 sociology or anthropology. I have in the past, here  
18 and there, used interviews.

19                    But here I was really concerned with the  
20 public record, with what was available to anyone who  
21 would spend the time and effort to do it. So that's

1     what I decided to do.

2                     And this is not uncommon. Perhaps it's  
3     uncommon in journalism, but it's not uncommon in  
4     academic exercises of trying to look at things as they  
5     exist in the public record rather than trying to do a  
6     more journalistic analysis that would involve  
7     interviews.

8             Q         Now, you said just sort of towards the end  
9     that any opinion, at least, that there have been, I'll  
10    quote you, some very poor reporting in this case?

11            A         Yes.

12            Q         Is that correct?

13            A         I referred to the repeated references to  
14    250,000 cables being dumped by WikiLeaks at the time in  
15    which it was 272 cables that were redacted and released  
16    in coordination with the traditional media  
17    organization.

18            Q         So that comment specifically just recently,  
19    the very poor reporting, that's mainly referring to  
20    that analysis you did in November 2010, the --

21            A         That was primarily, primarily to that, yes.

1           Q           Now, do you believe, did you see, at least  
2   in your overview of the other time periods, so  
3   March 2010 to November or even prior to March 2010, did  
4   you see what struck you as poor reporting in those --

5           A           Yes, they were all. There's high  
6   variability and quality of reporting throughout the  
7   period.

8           Q           Now, if your conclusions are based in large  
9   part on what you've now acknowledged as sort of poor  
10   reporting in some places, does that, did you pause to  
11   sort of consider your conclusion entirely?

12          A           No, not at all.

13                   This is what you do as somebody whose a  
14   researcher. You assess different documents. You  
15   cross-reference the various perspectives, you form a  
16   judgment about what happened and then you form a second  
17   judgment about which sources you trust and which you  
18   don't.

19                   It's not even always a particular, a  
20   particular organization that would be more or less  
21   trustworthy.



1           I cite in the article a context in which on  
2 the same day, the same newspaper has three different  
3 articles on the embassy cable release. In one it  
4 states the obviously false statement of 250,000  
5 unredacted. In one it states the obviously correct  
6 statement of 270 in a different story on the same day.  
7 And in a third it says, began to release thousands.

8           So there's no magic bullet of if it's the  
9 New York Times, it's always correct and if it's some  
10 other place it's not.

11           You have to be able to cross-reference  
12 multiple materials, make assessments and come to a  
13 judgment. That's what I do.

14           Q       I want to talk about sort of your  
15 experience generally with the journalism and network  
16 Fourth Estate. Let me find, give me one second, sir.

17           Now, in your experience do journalists  
18 encourage anonymity with their sources? What I mean by  
19 that is they try to protect their sources from others  
20 but do they encourage the source to keep anonymity with  
21 them?

1           A           It depends on the context. Generally  
2 speaking, they want to know the source but it depends  
3 on the context. If you're talking about a Deep Throat,  
4 not necessarily.

5           Q           But in terms of authentication procedure,  
6 one of the ways that you actually do that is by  
7 ensuring that you know who's giving you materials,  
8 right?

9           A           That is certainly one possible method of  
10 authentication. Getting particular bits of information  
11 that could only be known by an authentic source and  
12 then cross-referencing would be another.

13                       There are different methods of  
14 authentication. Whether it's in journalism or whether  
15 it's in computer security, it doesn't matter. There  
16 are simply different methods of authentication.  
17 Identity of the source is one. Possession of a  
18 verifiable piece of information that is associated with  
19 certain knowledge might be another.

20           Q           Now, you spoke earlier about sort of the  
21 early part of WikiLeaks, '07 to '08, '09 timeframe and

1 you talked about how there was no question about the  
2 authenticity of materials posted by WikiLeaks. Now, do  
3 you have any direct knowledge of WikiLeaks'  
4 authentication procedures at any time?

5 A No, I don't. What I was referring to was  
6 the truly remarkable -- WikiLeaks was an organization  
7 for which there were plenty of people who worry about  
8 the authenticity and who would have been perfectly  
9 happy to publish instances where WikiLeaks had to  
10 redraft.

11 What was remarkable and in that regard just  
12 as a pure fact, not anything you could manipulate, what  
13 was remarkable was that through dozens of publicly  
14 reported releases, thousands of releases, there were no  
15 significant reports of WikiLeaks having to retract and  
16 say, oops, this wasn't authentic. Dan Rather, I'm  
17 sure, would have loved to be able to say the same thing  
18 for himself.

19 Q Now, have you ever seen in your experience  
20 with journalism or otherwise, have you ever seen a  
21 journalist tell a source, lie to me?

1           A           Not that I know of.

2           Q           And we talked, I asked you a number of  
3 questions yesterday. I kind of want to go through  
4 those now.

5                       You would agree that there's a difference  
6 between a transparency movement and a journalistic  
7 enterprise?

8           A           Yes.

9           Q           A transparency movement seeks institutional  
10 change?

11          A           I think in general transparency movement,  
12 any movement would be defined by the functions that it  
13 fulfills. And if its goal is to achieve institutional  
14 or social change, then I would call it a movement not  
15 an act of journalism.

16                       But these two are not mutually exclusive.  
17 You can have the same organization commit acts of  
18 journalism or acts of movement building and movement  
19 participation. The two are not, they're different,  
20 they're not mutually exclusive.

21          Q           Along the same line you would agree there's

1 a difference between freedom of information activist  
2 and a journalistic activist?

3 A Yes, I would.

4 Q And you'll agree there's a difference  
5 between activism and journalism?

6 A I think there's a difference between  
7 activism and journalism.

8 Although again there are activists who also  
9 perform journalism, and when they perform journalism  
10 they're doing journalism.

11 There are journalists who perform activism.  
12 When they're doing that, they're activists.

13 It's not a unique organization or  
14 individual identity. It's a behavior.

15 Q How do you determine when a organization is  
16 performing activism over performing journalism?

17 A I would define journalism as the gathering  
18 of news and information rather than for public concern  
19 for purpose of its dissemination to the public. When I  
20 observe an organization doing that, I would say it's  
21 engaged in journalism.

1                   When I say the effort to actually change an  
2 institution, I would say they're engaged in activism.

3           Q           So that's an interesting question I think  
4 we sort of talked about, we'll talk about a little  
5 later. But at least with your research and generally  
6 speaking, you would agree that sort of actions are more  
7 important than what someone says about themselves,  
8 right?

9           A           Yes.

10          Q           Sort of trying to evaluate what someone is  
11 doing, you ought to look at actions, not what they're  
12 saying?

13          A           I think looking at what an organization  
14 does is a more crisp indication of how I would define  
15 it than what it says about itself. I think if you're  
16 trying to understand a way in which an organization  
17 understands itself, then you want to see what it says.

18                   But I'm very heavily focused on, this was  
19 why I said I looked at the content of the stories.

20          Q           Right.

21          A           To try to understand what the actual

1 behaviors were.

2 Q Now, would you also agree that there's a  
3 difference between the ideals of a journalist and the  
4 ideals of someone seeking maximum political impact?

5 A Not necessarily. Not necessarily. I think  
6 journalism has a broad range. There is a relatively  
7 narrow idea of more classical journalism. It's not  
8 really classical, it's mid 20th Century journalism  
9 that's very focused on just being a professional. But  
10 there's certainly politically oriented journalism. You  
11 can talk about --

12 Q Would that be like muck-raking journalism?

13 A Partly muck-raking journalism. For  
14 example, if you look at something like the nation,  
15 there's a particular view of the world, a particular  
16 political world view and reporting that's oriented  
17 toward that. It's not you select anything you want.  
18 You select things, not simply because they're  
19 interesting but because they are relevant to action in  
20 a particular political perspective. It doesn't make it  
21 not journalism. It makes it a certain kind of

1 journalism, mobilized journalism.

2 Q The idea is to select things that are  
3 newsworthy when you're a journalist?

4 A No. I'm saying there are diverse forms of  
5 journalism and all the news that's fit to print is one  
6 model. And it claims for itself a complete political  
7 neutrality.

8 But I don't think that an organization like  
9 The Nation or an organization like Fox News doesn't  
10 take political impact of the reporting into  
11 consideration of what to report on, how to report and  
12 which facts to underline.

13 I wouldn't call the nation or Fox News not  
14 journalism simply because they don't only do all the  
15 news that's fit to print.

16 Q Now, would you agree that mass document  
17 leaking is somewhat inconsistent with journalism?

18 A No. Why would I agree with that?

19 Q If there was no newsworthy news locus or  
20 nexus there?

21 A If it had no news and wasn't relevant I



1 might agree but the very fact, it depends on what  
2 the -- it depends on what you're looking for. I'll  
3 give you an example.

4           The most significant investigative body  
5 looking at civilian casualties in the Iraq war, Iraq  
6 body count, did Iraq SIGACTS and did a exposed analysis  
7 quantitatively and showed that actually from documents  
8 held by the government there was an incongruity between  
9 the number of civilian casualties reported by the  
10 government in Iraq and the actual number known to the  
11 government from these documents. You can't do that  
12 with one smoking gun document. The only way you can do  
13 that is by mass analysis of lots of documents.

14           So it really depends on the particular form  
15 of journalism and the particular form of question,  
16 whether what you need is cross-referencing of a very  
17 large number of documents, each of which may not itself  
18 make the particular point, but all of which together  
19 make an incredibly important point.

20           Q       Well, I'm glad you brought that up because  
21 you actually cite that in your paper, right, as one of

1 the noteworthy aspects of the publication of the Iraq  
2 war logs was this incongruity between what had been  
3 recorded and what was in the logs themselves. So let's  
4 talk about that.

5 Are you aware that the significant  
6 activities reports are usually written almost  
7 contemporaneously with an event?

8 A No, I wasn't aware of that. But broadly  
9 speaking, yes.

10 Q So I want to go through sort of an example,  
11 now, if that is true.

12 Let's take reporting on other sort of  
13 events that, where there's sort of casualties, et  
14 cetera. Let's talk about the Boston Marathon bomber.

15 Now, you would agree that at least  
16 initially there were --

17 MR. COOMBS: Your Honor, relevance at this  
18 point? I don't know if this is going to be another  
19 baseball card thing. But I would say relevance to  
20 going down the comparison to something totally  
21 unrelated to this case and also just an idea of how

1 much longer the government tends to go because it might  
2 be a good time for a break.

3 MR. MORROW: A couple more questions and we  
4 can break. Where I'm going with this is the sort of  
5 the wild variations in what's initially reported about  
6 casualties that aren't necessarily related to ill  
7 intent or anything else.

8 THE COURT: All right. I gave you some  
9 latitude. I'll give you some latitude as well. Go  
10 ahead.

11 BY MR. MORROW:

12 Q So you would agree there were wild  
13 variations after the incident in terms of number of  
14 casualties and deaths?

15 A I live in Boston. That's my recollection,  
16 too. But I can't tell you that I did it as a matter of  
17 research.

18 Q Now, you wouldn't say that that initial  
19 reporting was inaccurate reporting was on purpose  
20 necessarily?

21 A No.

1           Q           Or that news organizations meant to get  
2 them wrong?

3           A           Again, this is -- as somebody sitting at  
4 home with his kids looking at the news, not as a  
5 researcher.

6           Q           Right. Right.

7                       So I guess my question is: Do you see what  
8 might be sort of the same problems there in terms of  
9 describing a motivation to a particular incident or a  
10 particular number of deaths when it's based on sort of  
11 a firsthand account in time contemporaneously?

12          A           I assume where you're going is that it's  
13 possible that the count based on the logs was less  
14 accurate than the ultimate count.

15                      The point here is a matter of whether the  
16 information comes in the context where its political  
17 valence is understood or in the context that it's not.

18                      The public statements about the number of  
19 civilian casualties embody, you're right, a certain  
20 cleaning process. But they also embody an  
21 understanding of what the politics are of the events.

1                   How you define what counts as caused or not  
2     caused by the actions will allow you to shrink the  
3     results.

4                   What we have here was an independent  
5     account based on formal documents that allowed for an  
6     analysis that was uncorrelated with the analysis that  
7     already came with an understanding of its political  
8     consequences.

9                   So again, as with any context of trying to  
10    understand what is the truth of the matter, finding  
11    another source that is sufficiently distinct and not  
12    tainted by the same problem which is understanding the  
13    political consequences of the reporting, give us a real  
14    insight, us, the public, a real insight into potential  
15    numbers.

16                  Now, if you then want to engage in a  
17    political debate, no, no, here's why these are wrong  
18    and here's why we are right, that's fine.

19                  But it's a distinct uncorrelated source of  
20    data that gives you a real sense of some confidence of  
21    whether or not there's variation, which may or may not

1 be because of political considerations in the  
2 definition of what counts as a casualty.

3 In any event, it is journalism. It is a  
4 question of what is a news source on a question that is  
5 absolutely central to public debate that comes from a  
6 different source and gives us a very different picture  
7 and forces a public debate over which of the two  
8 numbers is right, how they were arrived at. That's a  
9 context of journalism going back to your original  
10 question where the mass release is what actually gives  
11 us this perspective.

12 MR. MORROW: Your Honor, if you want to  
13 take a break at this time.

14 THE COURT: Well, is this a good time for  
15 both sides to take a break?

16 MR. COOMBS: Yes, Your Honor. We would  
17 request just an hour and 15 minutes.

18 THE COURT: Start then at --

19 MR. MORROW: Can you give us one moment,  
20 please?

21 THE COURT: Yes.

1                   MR. FEIN: Ma'am, if the United States  
2 requests the hour and 15 is fine or whatever the court  
3 will say. However we will get back to the court. We  
4 might need additional time in order to show a new piece  
5 of evidence to Professor Benkler to test his opinion.

6                   THE COURT: If you likely require  
7 additional time we can start at 14:30.

8                   MR. FEIN: We think we will but we have to  
9 ask the predicate questions during the break.

10                  THE COURT: Any objection to starting at  
11 14:30?

12                  MR. COOMBS: No objection, Your Honor.

13                  THE COURT: Court is in recess until 14:30.

14                  (Court is in recess at 12:45 p.m.)

15                  (Luncheon recess taken.)

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	<b>134:19</b>	<b>Advisers (1)</b> 24:5	<b>allows (1)</b> 103:21
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